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ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor-General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1867.

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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 4th January 1867.

PRESENT:

His Excellency the Viceroy and Governor General of [illegible].
His Honour the Lieutenant Governor of Bengal
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble Colonel H. M. Durand, C. B.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble H. F. Riddell.
The Hon'ble J. E. L. Brandreth.
The Hon'ble M. J. M. Shaw Stewart.
The Hon'ble C. P. Hobhouse.
The Hon'ble J. Skinner
The Hon'ble D. Cowie.

ADMINISTRATION OF JUSTICE (DARJÍLING) BILL.

His Honour THE LIEUTENANT GOVERNOR of Bengal, in moving for leave to introduce a Bill to make further provision for the administration of justice in the District of Darjíling, said that this was a very small matter, and it would not have been necessary to trouble the Council to legislate on it but for a technical difficulty. Up to the year 1862, the Sudder Court, or as it was now called the High Court, had no jurisdiction whatever in Darjíling. In that year it was thought advisable to place the Courts in Darjíling under the High Court, but under a certain modified jurisdiction. A Bill to effect this would have been brought before the Bengal Council, but that it affected the jurisdiction of the High Court, which, under the Indian Councils' Act, it was beyond the power of the Bengal Council to do. A Bill was accordingly brought into this Council by the Hon'ble Mr. Maine to define the jurisdiction of the Courts in Darjíling and to place them under the High Court. That Bill was passed and became law as Act X of 1863.

The necessity for altering the law now arose from this circumstance. One of the provisions of the Act was that appeals from the Deputy Commissioner in Civil and Criminal matters lay, and also commitments were made, to the Judge of Dinájpúr. By a recent arrangement the District of Darjíling had been taken from the Bhágalpúr Division, and now formed part of a separate Division under the Commissioner of Kúch Bíhár, with the powers of a Judicial Commissioner; and it was now desirable that all appeals and commitments should be to the Commissioner of Kúch Bíhár. But as the constitution of the Kúch Bíhár Division was a temporary one, and it was not known when it might be necessary to alter it, it had been thought advisable to modify the existing law so as to provide that all appeals and commitments should lie and be made to the Judge of Dinájpúr or such officer as the Lieutenant Governor of Bengal should from time to time appoint in that behalf.

The Motion was put and agreed to.

PRESIDENCY JAILS BILL.

The Hon'ble MR. MAINE introduced the Bill to amend the law relating to the custody of prisoners within the local limits of the original jurisdiction of the High Courts at the Presidency Towns, and moved that it be referred to a Select Committee, with instructions to report in three weeks. He said that this Bill was essentially a local Bill, and only submitted to the Council on account of the same technical difficulty which had forced His Honour the Lieutenant-Governor to bring in the Bill which he had just asked leave to introduce, namely, the incompetence of the local legislatures to affect the jurisdiction of the High Courts. The proposal was simply to extend to Madras and Bombay the law now regulating the Presidency jail in Calcutta, and it certainly was somewhat remarkable that in this Council they should be legislating for a jail in Madras. Two years ago it was thought expedient, partly on account of sanitary considerations, and partly on account of jail discipline, to remove the Presidency jail at Calcutta from the control of the Sheriff, and to place it under the control of a special officer, so that it might be brought into connection with the general system of jail-superintendence in Bengal. A Bill to that effect was prepared in the Bengal Legislative Office, but His Honour the Lieutenant-Governor was very properly advised that his own Council had not the power of enacting it, and accordingly he introduced it himself into the Imperial Council. The Bill became law as Act XII of 1865. But the Council attempted to protect itself against having to legislate in so purely local a matter by adding a section enabling the Governors in Council in Madras and Bombay to extend the Act *mutatis mutandis* to their own Presidency jails. The Advocate

General at Madras, Mr. Norton, had, however, expressed an opinion that the Act could not be extended under that section, inasmuch as there were at Madras two Presidency jails and not one; and MR. MAINE believed that the case was the same at Bombay. Whether that difficulty were well founded or not, the matter was one on which there ought to be no doubt, and accordingly it now became necessary, at the instance of the Madras Government, to extend the Act expressly to Madras and Bombay. The Bengal Act was repealed by the Bill and its substance incorporated with it, merely for the purpose of having the whole law within one Statute.

The Motion was put and agreed to.

TRANSHIPMENT OF GOODS (BOMBAY) BILL.

The Hon'ble MR. SHAW STEWART introduced the Bill to facilitate the transhipment of goods imported into Bombay by steamers, and moved that it be referred to a Select Committee, with instructions to report in three weeks. He said that the Bill itself was very simple, and the objects and reasons for it were fully given in the printed statement before the Council. He would therefore not take up the time of the Council with any further remarks.

The Motion was put and agreed to.

CIVIL COURTS (JHÁNSÍ) BILL.

The Hon'ble MR. MAINE introduced the Bill to define the jurisdiction of the Courts of Civil Judicature in the Jhánsí Division, and moved that it be referred to a Select Committee, with instructions to report in three weeks. He said that this also was a local Bill, which had been introduced in this Council, because the North-West Provinces had no legislature of their own, and even if they had, that legislature would be incompetent to modify the jurisdiction of any of the High Courts. The measure had been prepared at the instance of the Local Government, and had the approval both of the High Court at Agra and the Board of Revenue. Its effect was to transfer suits for land from the jurisdiction of the Revenue to that of the Civil Courts in Jhánsí, and to place these Courts wholly under the appellate jurisdiction and control of the High Court of the North-Western Provinces. The territory of Jhánsí lapsed to the British Government about twenty years ago, and after temporarily forming part of the Saugor and Nerbudda territory, was ultimately attached to the North-Western Provinces, though it was not brought under the General Regulations. As the Council were aware, there was once a theory that in Non-Regulation Districts the Executive Government was also the legislature

But the controversy which arose on the point had finally been set at rest by the Indian Councils' Act, which, on the one hand, established as law by a sweeping provision all legislative rules made before 1861 by Lieutenant Governors or by the Governor General in Council for Non-Regulation territory, and, on the other, impliedly reserved all legislation after that date to the legislatures created by the Indian Councils' Act itself. The jurisdiction of the Courts in Jhánsí had been regulated by rules made under the influence of the theory he had described. But it so happened that these rules were made by the Lieutenant-Governor slightly subsequently to the passing of the Indian Councils' Act, and hence an Act of this Council, Act XXIV of 1861, was passed at the instance of Sir Henry Harington to give them legal validity. Since that Act became law, two things had occurred. The High Court for the North-West Provinces had been established, and the settlement of the land revenue at Jhánsí had been concluded. The Local Government now asked for the present measure, and MR. MAINE could not help saying that the case for it appeared to be overwhelming. The first person who seemed to have moved in the matter was Major McNeile, the Officiating Commissioner of the Jhánsí Division, who stated that "the Civil Procedure Code had been in force for some time there, the Courts were on the Criminal side subordinate to the High Court, and on the Revenue side subordinate to the Board of Revenue, and there appeared no good reason why, on the Civil side, the Commissioner's decisions should be any longer final, or only appealable exceptionally to Government, which was practically the same thing." Major McNeile therefore submitted whether the time had not arrived for placing the Civil Courts of the Jhánsí Division under the jurisdiction of the High Court of the North-West Provinces. Therefore the North-West Government referred this to the Board of Revenue and the High Court. The Board of Revenue answered, recommending the change in very strong language.

"In reply, I am desired to state that, before receiving the letter under reply, the Board had already placed on record their opinion that the recent formation of a High Court in these provinces afforded a fitting opportunity for relieving them of their anomalous position as regards the Civil Courts of the Jhánsí Division and of the family domains of the Mahárájá of Benares; and the Board would strongly urge that the duties which they are now called upon to perform as the ultimate Court of appeal from the decisions of Civil Courts may be transferred to the High Court.

"The Board would record their opinion that the vesting of an executive authority like the Board of Revenue with the powers of a Court of final appeal in matters relating to the Civil Courts is open to every sort of objection, personal, departmental and general. The Board, *as a body*, have no knowledge on such subjects, being unassisted by any skilled advocates, and un-

supplied with a store of precedents and decisions covering analogous cases. Their decisions, therefore, carry no weight, and may possibly run counter to decisions of the High Court in precisely similar cases. The arguments in favour of introducing such a state of things can only be dimly apprehended, and can only belong to a period when the Chief Court of Judicature of this province did not enjoy, and possibly did not merit, the same respect from the executive which is readily paid to the High Court as now constituted."

The High Court answered in language naturally somewhat less emphatic—the Registrar saying—

"In reply I am desired to express the concurrence of the Court in the propriety of the proposed measure, and to suggest a legislative enactment as the mode by which legal effect may be given to the proposal."

Having received these opinions, the North-West Government strongly recommended a legislative enactment to the effect proposed, in the following language—

"Hitherto suits relating to landed property have been heard by the Revenue Courts in this Division, the ultimate appeal from the decisions of which lay to the Board of Revenue, and in suits relating to other kinds of property, which were heard by the Civil Courts, the order of the Commissioner of the Division was final, it being, however, provided that in any case in which the decisions of the Courts of first instance and of appeal differed, the Government might refer the proceedings to the Sadr Court for their report and opinion, and thereafter pass such orders as appeared proper.

"The time has now, in His Honour's opinion, come when the jurisdiction in suits relating to land may with safety be transferred to the Civil Courts, and the latter subordinated to the High Court. As the revision of the settlement at Jhánsí is nearly completed, and the rights in land have been defined and recorded, it appears to the Lieutenant Governor that no reason exists for any longer maintaining a different system in Jhánsí from that in force throughout the rest of the North-Western Provinces. It is also desirable that the Board should be relieved from the anomalous position in which, under existing arrangements, they are placed by having to discharge a duty which is foreign to their office, and for the due performance of which they have not the aid of an efficient Bar.

"The Agra High Court, who have been consulted on the subject, approve of the proposal of the Commissioner of Jhánsí; but the Lieutenant Governor concurs with the Court in thinking that a legislative enactment is necessary to give legal effect to it. The present system of Courts and jurisdictions at Jhánsí is legalised and fixed by Section 2 of Act XXIV of 1864, and it is only by a new Act that the jurisdiction of the High Court can be extended to them.

"It appears to the Lieutenant Governor that the object aimed at will be best attained by the enactment of a law similar to Act XIV of 1865 (the Central Provinces Courts' Act), defining the jurisdiction of the Courts of Civil Judicature in the Jhánsí Division, and the extension

thereto of the Acts prescribing the Civil Courts' procedure, *viz.*, Act VIII of 1859, and the other Acts modifying and amending it.

'A draft of the Act which it is proposed to introduce is herewith forwarded for the consideration of His Excellency the Viceroy and Governor General in Council."

The draft Act sent up by the North-West Government was in point of fact a transcript of the Central Provinces Courts' Act; and there was some fitness in this, since, as MR. MAINE had stated, the Jhánsí Division had been originally attached to the Ságar and Narbadda Territory, which now formed part of the Central Provinces, and was under the same judicial system. It possibly might be convenient to add in Committee a Section enabling the Lieutenant Governor to bring other Non-Regulation Districts under his government successively under this Act, and consequently under the supervision of the High Court.

The Motion was put and agreed to.

MURDEROUS OUTRAGES (PANJÁB) BILL.

The Hon'ble MR. BRANDRETH introduced the Bill for the suppression of murderous outrages in certain districts of the Panjáb, and moved that it be referred to a Select Committee, with instructions to report in a month. He said that he had just received from the Secretary to the Panjáb Government a list of sixteen outrages committed in that province against Europeans, Eurasians and others, since its annexation. The list, it was stated, was not so complete as might be wished, but the Secretary had sent what he could. That list contained all the cases of murder within the last five years.

In regard to the Bill itself, besides the explanation which he had before given, MR. BRANDRETH would not ask the attention of the Council to more than one or two other matters. He was desirous of not deviating from the Criminal Procedure Code to any greater extent than was necessary in order to provide for a more speedy mode of trial. But in Section 6 of this Bill, he had made for another reason an alteration in regard to the mode of appointing assessors. Instead of their being taken by lot he had required that they should be appointed by the Commissioner, and should, if practicable, be Magistrates or officers in command of Native Regiments. In all other respects the provisions of the Code in regard to assessors would be followed. A distinguished officer, the late Major James, Commissioner of the Peshawar Division, he (MR. BRANDRETH) remembered, when holding a trial of subjects of the British

Government, refused (although MR. BRANDRETH did not think that the refusal was strictly legal) to appoint any assessors. Major James considered that since it was well known that the whole population were sympathizing with the rebels, it would be absurd to choose from among them assessors in the manner prescribed by the Criminal Procedure Code. MR. BRANDRETH had no reason for supposing that any general sympathy would be felt for criminals of the class for whose trial this Bill provided; still it contained one or two provisions of such a nature as to render it desirable that the assessors who sat at the trial of these criminals should not be persons of the same caste as the offenders, and this they might be if they were taken by lot in the manner directed in the Criminal Procedure Code. Besides, the commanding officers of our frontier Regiments were most of them men of such knowledge of the country and people, and so eminently qualified in many respects as members of the Court in these trials, that he (MR. BRANDRETH) thought that their assistance should certainly be secured. It would be seen that no reference was made to the religion of any class of persons. All servants of the Queen would be entitled to the protection which it was hoped would be afforded by this Act, as well as all other persons whose religion differed from that of the offenders, and who were consequently liable to be the victims of these fanatical attacks.

He had entered in a separate piece of paper two other Sections not included in the Bill. He had done this because he was not sure whether they should be included in the Bill, and also because he thought they would be better considered separately by the Committee to which the Bill would be referred. They related to fines on persons suspected of concealing offenders under the proposed Act, or not giving up their names. The Committee would decide whether they should be included in the Bill or not.

The Hon'ble MR. MAINE said that he entirely approved of the Bill. He believed that the recital in the preamble was certainly true; that in certain districts of the Panjáb fanatics had frequently murdered and attempted to murder servants of the Queen and other persons whose religion differed from that of the offender, and further that the general law of the country was not adequate to suppress such offences. As regarded the second category—persons other than servants of the Queen—he might vouch His Excellency the Viceroy as authority for the statement that, not only European Christians, but the Hindú traders who resorted to these frontier regions for purposes of business were occasionally the victims of these fanatical assassinations. It was true that the list of victims, even as extended by the letter which Mr. Brandreth had read,

was not very large, but still the very reason of its smallness was that the Panjáb authorities on the frontier had found it practically impossible to act on the general law of the country. Whenever one of these assassinations was reported, the administrative officer invariably stated that he had been obliged summarily to execute, the culprit, and when the facts were reported, they invariably constituted so strong a case, that the person who had thus gone beyond the law received the approval not only of this Government, but of the Secretary of State. The Bill therefore was not so much a Bill permitting officers on the trans-Indus frontier to order summary execution, as a Bill recognizing the fact that summary trial and execution were occasionally unavoidable in the trans-Indus territory, but placing the practice under regulation and restraint. MR. MAINE was glad that his Hon'ble friend had adhered to the ordinary procedure as much as was consistent with the object of the measure, because it could not be denied that the danger of the Bill arose from the probability of its being applied somewhat under the influence of panic, and therefore it was desirable that the utmost reasonable time for reflection and enquiry should be secured. MR. MAINE would only remark on Section 13, that the jurisdiction conferred by the Bill was intended to be exercised by the Commissioner in as many cases as possible, and that it was not meant that, unless where there were exceptional circumstances through the absence of the Commissioner, or even through his assassination, these large powers should be put in force by any inferior officer. He thought that the Section should be so framed that, subsequently to the murderous attempt, and not previously, the authority of the Commissioner, if he survived, should be obtained by the delegated officer,—power being given to hold the summary trial only if that authority could not be obtained within a limited time.

His Excellency THE PRESIDENT said that he was very much in favour of this Bill. He considered that its introduction was urgently required in the Panjáb. He thought that it was a very great evil in itself that officers should act above and beyond the law. On the other hand it was fraught with evil and danger that outrages of this description should take place, and yet that there should be no law permitting summary trial and execution in such cases. He thought that the passing of a law by which such cases could be heard and disposed of at once would have a good effect on the population generally, and would as completely provide for the safety of Government servants as the circumstances of the country required. He could fully bear out what his Hon'ble friend Mr. Maine had said, that in former days, when His Excellency was Chief Commissioner of the Panjáb, assaults were continually made on

Hindú traders. Some of them were carried away into captivity, from which they were not liberated without payment of heavy ransoms, and in some cases where ransom was refused, they were tortured and put to death. No doubt the love of plunder was often, to a considerable extent, the actuating motive of the criminals in these cases. But fanaticism also operated, and in proof of this he might mention that it was only Hindú traders, and never Muhammadans, that were thus maltreated.

As regarded Section 6 of the Bill, His Excellency thought it would be well to leave out the word "full" in that part of the Section which provided that the assessors should "be persons exercising the *full* powers of a Magistrate." He thought that, if the appointment of assessors was limited to officers exercising the full powers of a Magistrate, in many cases there would be difficulty in finding persons available for the duty; whereas almost every official (whether English or Native) in the Panjáb, from the rank of Tahsíldár upwards, would have some of the powers of a Magistrate. His Excellency thought that such officers would make very proper assessors. He would therefore suggest that the word "full" be left out, and as regarded the subsequent part of the Section "or officers in command of Native Regiments," he thought that some alteration might be made so as to include Native officers of such Regiments. As the Section now stood, it might often happen that there might not be a full complement of Europeans on the spot, and Native officials and Native officers might be available as assessors.

The Hon'ble Mr. Brandreth explained, with reference to the remarks of His Excellency, that the words "if practicable" would probably meet all that was required. It was intended that officers exercising the full powers of a Magistrate (whether Europeans or Natives), or officers in command of Native Regiments, should be primarily selected. If they should not be available, he thought that the terms of the Section would allow of any others being made available as assessors.

His Excellency the President said that, as the Section stood, it would look as if it were the object of Government to limit the appointment of assessors to Europeans, whether Civil or Military men. But he thought it would be desirable to shew, by the words of this Section, that Native officials and Native officers, men of high character, should also be eligible as assessors. He believed that some such provision would commend itself to public opinion amongst Natives.

The Hon'ble Mr. Maine said that he fully understood His Excellency's observation, and he could assure him that it would be attended to in Committee.

The Viceroy meant that the Section should be framed so as not to appear to shew any distrust of those who no doubt would constitute the intelligent class of Native gentlemen in those districts, namely, the Native officials.

The Hon'ble COLONEL DURAND intimated a doubt as to whether Section 13 as it stood would not meet Mr. Maine's difficulty, as regarded delegation of power from the Commissioner.

The Hon'ble MR. MAINE said that what he wished was that the Section should distinctly intimate that the authority of the Commissioner should, if possible, be obtained subsequently to the outrage, and that the powers given by the Bill should not be exercised by any subordinate in virtue of a previous delegation, general or special.

The Motion was put and agreed to.

ALTERATION OF DISTRICTS (PANJÁB) BILL.

The Hon'ble MR. MAINE introduced the Bill to empower the Lieutenant Governor of the Panjáb to create new and to alter the limits of existing Districts in the Territories under his government, and moved that it be referred to a Select Committee, with instructions to report in three weeks. He said that this was another local Bill, and resembled one passed by the Lieutenant Governor of Bengal in his own Council. Since the Bill had been published, it had been represented to MR. MAINE that it went too far, and that by enabling the Lieutenant Governor to create new districts it enabled him indirectly to create the necessity for an addition to his judicial and administrative staff, and thus to impose a burden on the revenues of India. He would therefore propose in Committee that, while the Lieutenant Governor might alter the boundaries of districts at his option, he should only create new districts with the previous consent of the Governor General in Council.

The Motion was put and agreed to.

PENALTY FOR PURCHASING SOLDIERS' NECESSARIES BILL.

The Hon'ble COLONEL DURAND, in moving for leave to introduce a Bill to reduce the pecuniary penalty for purchasing from Soldiers arms, ammunition, clothes and other articles, said that the statement which accompanied the Bill gave clearly the reasons for a measure which proposed to make some minor alterations in one of the Sections of the Mutiny Act. The fact was that the maximum pecuniary penalty imposed by that Act on persons purchasing arms, necessaries, &c., from Soldiers was, with respect to the circumstances of the Natives of this country, much heavier than it should be; and consequently

it was considered advisable to reduce it, so as to make it more moderate and suitable to that class of people. He might state that the Bill proposed to make no difference as to the alternative period of imprisonment provided in the Mutiny Act.

The Motion was put and agreed to.

INDIAN SUCCESSION ACT, 1865, EXTENSION (STRAITS' SETTLEMENT) BILL.

The Hon'ble MR. MAINE asked leave to postpone the presentation of the report of the Select Committee on the Bill to extend the Indian Succession Act, 1865, to the Straits' Settlement.

Leave was granted.

The following Select Committees were named:—

On the Bill to amend the law relating to the custody of prisoners within the local limits of the original jurisdiction of the High Courts at the Presidency Towns—The Hon'ble Messrs. Shaw Stewart and Hobhouse and the Mover.

On the Bill to facilitate the transhipment of goods imported into Bombay by steamers—The Hon'ble Mr. Maine, the Right Hon'ble Mr. Massey, the Hon'ble Messrs. Skinner and Cowie and the Mover.

On the Bill to define the jurisdiction of the Courts of Civil Judicature in the Jhánsí Division—The Hon'ble Messrs. Riddell and Hobhouse and the Mover.

On the Bill for the suppression of murderous outrages in certain districts of the Panjáb—The Hon'ble Mr. Maine, the Hon'ble Colonel Durand, the Hon'ble Messrs. Shaw Stewart and Hobhouse and the Mover.

On the Bill to empower the Lieutenant Governor of the Panjáb to create new and to alter the limits of existing Districts in the Territories under his government—The Hon'ble Messrs. Brandreth and Hobhouse and the Mover.

The Council adjourned till the 11th January 1867.

CALCUTTA,
The 4th January, 1867.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

Govt. Central Press.—No. 168 L. D.—14-12-78.—50.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations, under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 11th January 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Honour the Lieutenant Governor of Bengal.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Hon'ble Colonel H. M. Durand, C. B.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Maháráá of Burdwan.
The Hon'ble H. B. Riddell.
The Hon'ble J. E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
His Highness Nawáb Muhammad Qálb Alí Khán Bahádur, Nawáb of Rámpúr.
The Hon'ble C. P. Hobhouse.
The Hon'ble J. Skinner.
The Hon'ble D. Cowie.

His Highness NAWÁB MUHAMMAD QALB ALI KHAN BAHADUR, Nawáb of Rámpúr, made a solemn declaration of allegiance to Her Majesty, and that he would faithfully fulfil the duties of his office.

COMPTOIR D'ESCOMPTE BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill to make further provision for suits by and against the Comptoir D'Escompte of Paris, said that this was a Bill which he thought the Council would consider it equitable to pass, and, if necessary, to pass under a suspension of the Rules for the Conduct of Business. The French Bank, called the Comptoir D'Escompte, under the existing law, was suable and might sue in the name of the chief manager of its Indian agencies. It appeared, however, that recently at Bombay, when a suit was brought against the Bank, the local manager of

the agency pleaded that he was not the proper defendant, and stated that while there had been a chief manager, and indeed while there still was such a functionary, he no longer resided in India. MR. MAINE did not blame the Bank for putting in such a plea: its arrangements and organisation had probably been altered; and the defence advanced in its name had probably been put in by an over-astute legal adviser; because, not to speak of the want of equity in such a defence, any liability which the Bank would get rid of by relying on it, would be more than compensated by the Bank's losing the power of suing other persons. MR. MAINE proposed, in a Bill of a few lines, to provide that in suits by or against the Comptoir D'Escompte, the nominal plaintiff or defendant should be the manager or acting manager of the agency at the place where the cause of action arose.

The Motion was put and agreed to.

ADMINISTRATION OF JUSTICE (DARJILING) BILL.

His Honour THE LIEUTENANT GOVERNOR of Bengal introduced the Bill to make further provision for the administration of Justice in the District of Darjiling, and moved that it be referred to a Select Committee, with instructions to report in three weeks. He said that on the last day of meeting he had sufficiently stated the reasons for the Bill, and it was therefore unnecessary for him now to trouble the Council with any further remarks.

The Motion was put and agreed to.

MOFUSSIL SMALL CAUSE COURTS REFERENCES' BILL.

The Hon'ble MR. MAINE introduced the Bill to empower Courts of Small Causes in the Mofussil to refer for decision questions arising in the execution of decrees, and moved that it be referred to a Select Committee, with instructions to report in three weeks. He said that Section 22 of the Mofussil Small Cause Courts' Act now in force, which Section was copied from an analogous Section in the earlier Act of 1860, ran as follows:—

"If in the trial of any suit under this Act any question of law, or usage having the force of law, or any question as to the construction of a document, which construction may affect the merits of the decision, shall arise, the Court, in suits for an amount not exceeding five hundred Rupees, may, either of its own motion or on the application of any of the parties to the suit, and in suits for an amount greater than five Rupees shall, draw up a statement of the case and refer it, with the Court's own opinion, for the decision of the High Court."

It had been doubted whether, under that Section, questions arising in the execution of decrees could be referred for the opinion of the High Court. That

doubt, whether well founded or not, ought to be set at rest, and MR. MAINE would propose, in a short Bill, to enact that such questions should be capable of reference. The more cases that were stated for the opinion of the High Court the better. The further suggestion had been made that points arising in the preliminary proceedings should also be brought under the Section. That was a point for the Committee.

The Hon'ble MR. HOBHOUSE said that the few remarks he should make on this Bill would be entirely in its favour, because he thought that the questions which arose in execution were some of the most difficult questions with which the Small Cause Courts had to deal.

In matters which principally came before those Courts, *i. e.* bond cases, the question of fact was an easy one, and in the great majority of cases or at any rate in a very large number, judgment was confessed, and it was not until after execution was taken out that any real question arose. For instance, a person might in the interim, *benámi*, as it was called, make over his property to some member of his family, and then questions would arise whether the transfer was *benámi* and so on, and these were often questions of great difficulty.

He should be inclined, as a matter of principle, to go farther than this Bill proposed to do, and make it apply, not only to references of questions arising in execution, but also generally to references from Judges of the Small Cause Courts, of all questions of law and custom having the force of law, to the High Court. His own opinion was that all such questions, whether they were questions involving property to the extent of 5 Rupees or 1,000 Rupees, should be referred to the High Court. Whether the property involved was valued at 5 Rupees or 500 Rupees was of no real consequence. The question was, whether the Judges should not refer those questions, whenever they arose, to a Court competent to deal with them.

Of course, the point which he had raised would be much better considered in Committee. He only threw it out now for the consideration of the Hon'ble Mover of the Bill.

There was another matter on which he wished to say a few words. He observed that, under Act XI of 1865, the Registrars of the Small Cause Courts might have the same powers as the Judges, and they might refer questions of law and custom having the force of law to the Judges. He thought that they ought to be obliged to refer questions arising in cases of execution.

The Hon'ble MR. MAINE said that his Hon'ble friend Mr. Hobhouse had had very considerable experience in the Mofussil, and he accepted his support for the Bill as it stood with much satisfaction. But MR. MAINE entertained grave doubts whether it would be proper for the Committee to introduce the further changes which commended themselves to his Hon'ble friend. Mr. Hobhouse's proposal that the Small Cause Court Judges should compulsorily refer all questions of law or usage arising in suits for amounts below 500 Rupees went to the root of the Small Cause Court system; and any provision for making a change so fundamental should be embodied in a substantive measure. MR. MAINE was very averse to introducing changes of importance, or changes which went to principle, in Committee—if only because it was difficult to give sufficient notice of them to the public. So far as the Bill went, he was glad it had his Hon'ble friend's support.

The Motion was put and agreed to.

PORT DUES (MOULMEIN AND BASSEIN) BILL.

The Hon'ble MR. GREY introduced the Bill for the levy of enhanced port dues in the ports of Moulmein and Bassein, and to provide for the establishment and maintenance of coast lights in the eastern part of the Bay of Bengal, and moved that it be referred to a Select Committee, with instructions to report in four weeks. He said that the objects of this measure were to provide for the levy of light dues, first, on account of port lights, from vessels entering certain ports in British Burma; and secondly, on account of coast lights, from vessels making voyages in the Bay of Bengal to and from certain ports. The Council were no doubt aware that Government had for some years past been engaged, and was still engaged, in constructing a series of light-houses on the coast of Burmah and the adjacent islands, for the benefit and protection of ships navigating that part of the Bay of Bengal. Three of these had been completed, *viz.*, the Double Island light-house at the entrance to Moulmein; the light-house on the Alguada Reef, and the light-house on the Cocos. The light-house on the Alguada Reef was, he believed, one of the finest works of the kind, and had cost upwards of £100,000. There were two other coast light-houses projected; one on the Oyster Reef outside Akyab; the other either on the Barugna Shoal or the Krishna Shoal.

For the first object, *viz.*, the levying of light dues on account of new port lights, it was proposed to increase the port dues now levied at Moulmein and Bassein. Rangoon and Akyab had for some time past been provided with port lights, and the existing scale of port dues in those ports was held to include

light dues. At the entrance to Moulmein a new light-house had been erected, and it was therefore proposed to levy a special addition to the port dues of that port on account of the light. With regard to Bassein, there was no special port light, but the Alguada light, though primarily and chiefly a coast light, was, in some measure, a guiding light for ships entering Bassein, and therefore it was reasonable to levy a small light due on such vessels. With regard to the dues for coast lights, they were provided for by the third section of the Bill, the voyages on which they would be payable being fully described, and he did not know that there was anything in that section which required remark.

The only question which might possibly give rise to discussion was as to the rate of toll, which it was proposed to fix at one anna a ton. That rate, he believed, had been fixed by the Chief Commissioner in consultation with the local mercantile communities in British Burmah, and no communication on the point had been received from them, or from any other quarter. The rate was barely sufficient, he might remark, to pay the cost of the necessary establishments.

The Motion was put and agreed to.

PENALTY FOR PURCHASING SOLDIERS' NECESSARIES BILL.

The Hon'ble COLONEL DURAND introduced the Bill to reduce the pecuniary penalty for purchasing from soldiers, arms, ammunition, clothes, and other articles, and moved that it be referred to a Select Committee, with instructions to report in a fortnight. He said that he had nothing to add to the remarks which he made when he asked for leave to introduce the Bill. It was an exceedingly simple measure, and was only intended to reduce penalties which were disproportioned to the means of the Natives of this country.

The Motion was put and agreed to.

PANJÁB MUNICIPAL BILL.

The Hon'ble MR. BRANDRETH introduced the Bill to make better provision for the appointment of Municipal Committees in the Panjáb and for other purposes, and moved that it be referred to a Select Committee, with instructions to report in a month. He said that since he obtained leave to introduce this Bill, some suggestions on the subject had been received by him from the Panjáb. One suggestion was that, besides the taxes recognized by this Bill, a license tax should be taken on trades and professions, and that this should be added

to the list. In some of the towns of the Panjáb, a tax of this nature was already taken from persons of the artisan class and credited to the municipal fund, and it certainly did seem desirable and only reasonable that this kind of taxation should be extended to the richer class, such as shop-keepers and money-lenders.

Another suggestion was that a portion of the municipal funds should be credited to a provincial fund, out of which the cost of more general sanitary measures, and public improvements of a wider application, than those in which a single town was concerned, should be defrayed. He thought, however, that any scheme for raising additional revenues for the whole Province should form the subject, if approved of, of a separate Bill.

Other suggestions were that there should be a tax on carriages, horses, and other animals; that the municipal system for sanitary purposes should be extended to parganas and districts; and that, in the event of any Committee declining to raise funds for necessary works, the Lieutenant-Governor should have the power to levy a tax not exceeding one per cent. on the land tax from agriculturists, and one anna per house from non-agriculturists.

These suggestions would no doubt receive consideration, and this consideration would best be given in Select Committee. In his opinion, the principles by which the Bill should be governed were, that the rules hitherto made, so far as they had proved satisfactory, should receive the sanction of law; that a good deal, within certain limits, should still be left to the Lieutenant-Governor, and that where we legislated for any matters beyond those limits, that should only be as regarded matters upon which we were clear, and not that we should legislate on uncertain grounds with the chance of being useful. We should not sanction taxes unless we were satisfied that they were the most suitable taxes that could be proposed. He admitted that this Bill, owing to the limited experience we had had of the working of municipal institutions in the Panjáb, must be an imperfect one. We were only feeling our way, and he had no doubt that before long a supplementary Bill, to supply deficiencies in the present Bill, might very possibly be asked for.

The Hon'ble Mr. Riddell said that he had no objection to raise to the principle of this Bill, but he hoped that the Council would seriously consider whether powers of the unusual and extensive character proposed by the Bill should be given to the Lieutenant-Governor of the Panjáb; for instance, the power, without any control whatever, to appoint Committees, to make rules, to sus-

pend or limit the powers of the Committees, and to levy town-duties and taxes. If the Bill was really required, it might be made a temporary Act for one or two years, but not a permanent enactment.

The 5th and 9th sections of the Bill were those to which he referred as giving the Lieutenant-Governor these very unusual powers. According to those sections, the Lieutenant-Governor might appoint any number of persons, not less than five, to be a Committee. When that Committee was appointed they had power to levy taxes, to make rules, and levy rates or make assessments; and the Lieutenant-Governor might suspend or limit all or any of the Committee's powers, and might cancel or modify any of their proceedings or rules, and direct that the funds required for the purposes of this Act should be raised by town-duties at such rates and on such things as he should approve, and such funds were to be raised accordingly.

For the last few years the system of levying town-duties had been silently spreading, and, as he believed, had acted as a serious check to the commerce of the country. A large sum was easily raised. The townspeople did not object to the tax generally, because in point of fact the whole of the district was taxed for the benefit of the town; that was to say, any person who went into the market to buy English cloth paid the duty charged by the town-duty contractor; so that in parts of the country where this system had been introduced, the whole commerce of the country was affected. He believed that even raw cotton had been taxed on entering the limits of a town. Articles of great value and small bulk as well as those of small value and great bulk had been taxed. Piece-goods which were imported into Bombay and Calcutta, and which were the subject of imperial taxation, were taxed.

Before the Council authorized the extension of these duties to the towns and villages of the Panjáb, he thought that some information should be obtained as to the working of the system in places where it had been established. He was not sure if he was right in point of form. But he proposed to ask His Excellency's permission to call for a return shewing the names of the towns in the Panjáb and in other parts of India where town-duties under any name were levied, also schedules of the rates at which the tax was levied upon each article, the gross produce of the town-duties and an estimate of the amount realized on each article.

The Hon'ble MR. MAINE suggested that the best course would be to let the Bill go to Committee, and then the Committee would call upon the Executive Government for the returns which his Hon'ble friend required. As regarded the

last sections of the Bill, to which Mr. Riddell had adverted, and which indemnified the Panjáb Government for some of its past acts, there was no doubt that that Government had exceeded its legal powers. It must be remembered, however, that down to 1861 it was generally believed in India that the Local Government of a Non-Regulation Province might make rules, which, made for a Regulation Province, would require legislative sanction. What the Lieutenant-Governor had done was to continue the exercise of these powers rather too long, that was after the time when the Indian Councils' Act had finally settled the question by providing impliedly that there should be no legislatures in India save those constituted under the Statute. MR. MAINE quite agreed with Mr. Riddell that the powers proposed to be given by the Bill were somewhat large, but it was very difficult for the Imperial Council sitting in Calcutta to say what would be the best composition of Municipal Committees in the Panjáb. The most obvious way of saving this Council from the necessity of such legislation was the constitution of a separate legislature for the Panjáb under the Indian Councils' Act; but they were told that no material for such a legislature could be obtained. If that were so, it was inevitable that they must sometimes have recourse to Bills like the present, which in effect restored to the Lieutenant-Governor a part of the legislative power which he lost in 1861.

The Hon'ble MR. BRANDRETH said that he had got several papers connected with this Bill, which would probably furnish all the information which the Hon'ble Mr. Riddell required. If it should be found to be otherwise, the information could be called for, as the Hon'ble Mr. Maine had suggested, by the Committee to which he (MR. BRANDRETH) proposed that the Bill should be referred.

His Excellency THE PRESIDENT said that he thought there was a good deal of force in what the Hon'ble Mr. Riddell had advanced. At the same time it seemed to him pretty clear that we must either raise money in the way that the Bill sketched out, or forego the local improvements which it was very desirable should be made. It was impossible that the Government of India could, out of the revenues of the country, afford means for them; and therefore we must have the machinery by which we could raise the necessary taxation. So long as this machinery was limited to towns, HIS EXCELLENCY thought that there was not much danger of abuse. The inhabitants of these towns—at any rate, the leading men in these towns—were more or less educated, and if there was any serious abuse of such a power as that proposed to be conferred by the Bill, we should hear an outcry.

If this Bill were to apply to villages, HIS EXCELLENCY would be very much opposed to it. But so long as the tax was limited to the towns, he did not see the likelihood of any harm being done. He was opposed to any extra cess being levied on the land. There was no doubt much force in what the Hon'ble Mr. Riddell had advanced, namely, that the tendency of such taxation as was contemplated in the Bill was to interfere with trade. But so long as the rates were kept low, the amount levied would be quite inappreciable to those who had to pay it. At the same time, it was difficult to see that the trade of the country would be materially affected. These being his views, HIS EXCELLENCY was inclined to support the Bill of the Hon'ble mover.

The Hon'ble MR. HOBHOUSE said he hoped that some explanation would be given in Committee as to the very large powers which he saw by this Bill were proposed to be given to the Lieutenant-Governor. In looking over clauses 5 and 9, he found that there was hardly anything that the Lieutenant-Governor could not do. According to Section 5 he might appoint, by election or otherwise, the Committees. He might remove any of the members, add to their number, fill up vacancies occurring among them, and determine the time and manner of their election. Then again, by Section 9, he might suspend or limit any of the powers of the Committees, and also cancel or modify any of their proceedings or rules. He (MR. HOBHOUSE) did not mean to say that it might not be neccesary that the Lieutenant-Governor of the Panjáb should have these powers. But he thought that, when these enormous powers were given to him, —so enormous as in fact to render the Bill itself unnecessary,—there should be some explanation as to the reason why such large powers were required. He had no experience of the Panjáb or of its Government. But in a case of this kind, it did seem necessary that some explanation should be given, and he hoped that it would be given accordingly.

The Hon'ble COLONEL DURAND thought the Hon'ble Mr. Riddell's suggestion exceedingly important, that we really ought to know what we were doing before this Bill was passed. The Bill proposed to give enormous powers for a wide-spread system of municipal taxation, and we did not up to the present moment know how far that kind of taxation might come into conflict with the general taxation of the country. He thought that, before the Council proceeded with this Bill, there should be some very clear and specific information furnished to Hon'ble Members.

The Hon'ble MR. BRANDRETH said that perhaps he might explain that Bills very similar in character had already been passed by the Council for Oudh and the Central Provinces. He admitted that these town-duties did in some degree interfere with trade. But unless they were put a stop to altogether, we must clearly legalize them by this Bill. There were many questions connected with the Bill which would no doubt receive consideration in Committee, and therefore he thought it would be better at present to postpone any further discussion on the subject.

The Hon'ble MR. MAINE wished to state as a fact that no law similar to the present Bill had been passed for the Central Provinces, though no doubt an application for such a Bill had been received. There was a Municipal Act for the city of Lucknow in Oudh which might be extended to other cities by the Governor General in Council. Perhaps a reasonable solution of the difficulty as to taxation would be obtained by introducing the words "with the previous consent of the Governor General in Council" wherever a power to impose duties was conferred on the Lieutenant-Governor. The Government of India, being responsible for the finances of the Empire, there would in this way be a not inconsiderable security against the power of local taxation being abused

His Excellency THE PRESIDENT thought the introduction of the words proposed by Mr. Maine would be very appropriate, and would act as a check on any excessive enlargement of a system of municipal taxation. The fact was that there either must be some such system, or they must give up all hope of improving towns, and sanitary reform must be abandoned.

The Motion was put and agreed to.

GANGES TOLLS' BILL.

The Hon'ble MR. RIDDELL presented the Report of the Select Committee on the Bill to authorize the levy of Tolls for the improvement of the navigation of the Ganges.

PUBLIC GAMBLING BILL

The Hon'ble MR. RIDDELL also presented the Report of the Select Committee on the Bill to provide for the punishment of public gambling and the keeping of common gaming-houses in large towns in the North-Western Prov-

inces of the Presidency of Fort William, and in the Panjáb, Oudh, the Central Provinces, and British Burmah.

The following Select Committees were named:—

On the Bill to make further provision for the administration of justice in the District of Darjíling—The Hon'ble Messrs. Maine and Hobhouse, and the Mover.

On the Bill to empower Courts of Small Causes in the Mofussil to refer for decision questions arising in the execution of decrees—The Hon'ble Messrs. Riddell and Hobhouse, and the Mover.

On the Bill for the levy of enhanced port dues in the ports of Moulmein and Bassein, and to provide for the establishment and maintenance of coast lights in the eastern part of the Bay of Bengal—The Hon'ble Messrs. Maine, Shaw Stewart, Skinner and Cowie, and the Mover.

On the Bill to reduce the pecuniary penalty for purchasing from Soldiers arms, ammunition, clothes, and other articles—The Hon'ble Messrs. Maine and Hobhouse, and the Mover.

On the Bill to make better provision for the appointment of Municipal Committees in the Panjáb and for other purposes—The Hon'ble Messrs. Maine, Riddell, Shaw Stewart and Hobhouse, and the Mover.

The Council adjourned till the 18th January 1867.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 11th January 1867.

Government of India Central Printing Office—No. 836 L. D.—2-5-67.—50

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations, under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 18th January 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Honour the Lieutenant-Governor of Bengal.
His Excellency the Commander-in-Chief.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Colonel H. M. Durand, C. B.
The Hon'ble H. B. Riddell.
The Hon'ble J. E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
His Highness Nawàb Muhammad Kalb Alí Khán Bahádur, Nawáb of Rámpúr.
The Hon'ble C. P. Hobhouse.
The Hon'ble J. Skinner.
The Hon'ble D. Cowie.

COMPTOIR D'ESCOMPTE BILL.

The Hon'ble MR. MAINE introduced the Bill to make further provision for suits by and against the Comptoir D'Escompte of Paris, and moved that it be referred to a Select Committee with instructions to report in one week. He said that he had described the object of the Bill at the last meeting of the Council. It proposed, in a few lines, to provide that in suits by or against the Comptoir D'Escompte, the nominal plaintiff or defendant should be the acting chief manager of the agencies or the acting manager of the agency at the place where the cause of action arose. He had intended at first to ask His Excellency's permission to suspend the Rules for the Conduct of Business in order that the Bill might be passed at once. But he thought it would be preferable to refer the Bill to a Select Committee for consideration, with instructions

to report in one week. The Bill would be communicated to the local representatives of the Company, who, MR. MAINE presumed, would have no objection to its passing into law.

The motion was put and agreed to.

REMOVAL OF PRISONERS' BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to make further provision for the removal of prisoners.

HORSE-RACING BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to legalize horse-racing in India.

GANGES TOLLS' BILL.

The Hon'ble MR. RIDDELL moved that the Report of the Select Committee on the Bill to authorize the levy of Tolls for the improvement of the navigation of the Ganges be taken into consideration. He said that the alterations made in this Bill by the Select Committee, though important, did not in any way affect its principle, and it would perhaps be sufficient for him briefly to indicate their nature.

To the Bill as referred to the Committee was annexed a Schedule of tolls, which varied according to the cargo carried by each vessel, while at the same time the rule contained in the body of the Bill, under which vessels were to be measured, was framed with the object of providing that toll should be levied in proportion to the draught. This Schedule was objectionable as imposing a tax of the nature of a transit duty, and it was also inconsistent with the principle on which toll was to be levied under the rule to which he had just referred.

The provision that vessels which, on their upward voyage, had paid toll on the Nuddea Rivers should be partially exempted from toll on the Ganges above Dinapore was strongly objected to by the Government of Bengal; and on an estimate being made of the probable return, it was found that the produce of the toll, if reduced as proposed, would not be sufficient to provide the funds absolutely necessary, if really efficient operations were to be undertaken for the improvement of the Ganges in the part of its course to which the Bill would apply. The Committee had therefore struck out this provision, and had substituted for the Schedule of tolls a clause providing an uniform maximum toll of twelve annas per one hundred maunds for all vessels measuring two hundred maunds and upwards, according to the rule of

measurement in Section 3. The Committee had also given to the Local Government the power to reduce or alter the tolls, which the Bill, as referred, gave to the Governor General in Council. As the maximum toll was fixed, and the expenditure of the proceeds was entrusted to the Local Government, there appeared no reason why the power to reduce and alter the tolls should not also be given to the Local Government. With respect to steamers and flats, the Committee had adopted the rule in force on the Nuddea Rivers, and which would get rid of the necessity that would otherwise exist for frequent surveys and measurements. It was proposed that the tonnage of each steamer and flat should be taken to be that according to which port-dues were payable on arrival within the limits of the port of Calcutta. In the case of steamers, a deduction of thirty-five per cent. from the gross tonnage would be allowed for the weight of engines, &c., and in the case of flats, ten per cent. of the tonnage would be allowed for the cabin-accommodation, &c. The toll on empty boats would be almost nominal, as the burden on which toll was leviable varied directly with the immersion of each boat.

Powers had been given to the Local Government to make rules as to the navigation of the part of the river to which the Bill would apply, and to prohibit the erection of weirs and fishing-stakes likely to interfere with such navigation.

MR. RIDDELL hoped that the Bill as amended might be passed, as it would enable the Government of the North-Western Provinces to devise and carry out permanent works for the improvement of the navigation of the Ganges between Allahabad and Dinapore, and for the regulation of the lower part of the courses of those affluents of the Ganges, which in all probability were the causes of the shoals and bars which now so seriously interrupted the navigation of the main stream. As he had stated when introducing the Bill, the removal of even one shoal would most fully repay the charges which the measure would impose on boat owners, and if a clear channel could be opened to Mirzapore, it was impossible to estimate the extent to which the commerce of the country would benefit by the establishment of cheap and rapid water-communication between Calcutta and the North-Western Provinces.

The Motion was put and agreed to.

The Hon'ble MR. RIDDELL also moved that the Bill as amended be passed.

The Hon'ble COLONEL DURAND referred to Section 16 of the Bill which empowered the Lieutenant Governor to make rules for various matters.

Amongst them was the clause (*a*) which provided "for fixing the number and the width of steamers, flats and boats to be allowed to pass into or out of or through any part of the Ganges between Allahabad and Dinapore at one time or abreast." He supposed that this had reference to the prevention of obstructions in consequence of an undue number of boats endeavouring to pass at the same time. But there was no provision here as to obstructions caused by the depth of boats. It seemed to him that obstructions were just as likely to happen from that cause as from vessels trying to pass two or three abreast.

The Hon'ble MR. MAINE thought that the general words at the beginning of the Section would allow rules to be made for the purpose referred to by the Hon'ble and gallant Member. The clauses of the Section were only permissive as to some amongst other matters.

The Hon'ble MR. RIDDELL said that clause (*a*) was framed with a view of preventing the inconvenience which might be caused if steamers were navigated with several flats alongside.

The Motion was put and agreed to.

PUBLIC GAMBLING BILL.

The Hon'ble MR. RIDDELL asked leave to postpone his motion that the Report of the Select Committee on the Bill to provide for the punishment of public gambling and the keeping of common gaming-houses in large towns in the North-Western Provinces of the Presidency of Fort William, and in the Panjáb, Oudh, the Central Provinces, and British Burmah, be taken into consideration.

Leave was granted.

PÁNDHARÍ TAX (CENTRAL PROVINCES) BILL.

The Right Hon'ble MR. MASSEY, in moving for leave to introduce a Bill to provide for the re-assessment of the Pándharí tax in certain parts of the Central Provinces, said that this was a Bill for the confirmation and extension of a very ancient tax, which had been partially levied in certain portions of the Central Provinces under the Native rule. It was in form a house-tax, but it partook more of the character of a trades-license tax, occupiers engaged in agriculture or paying land revenue being exempted from its burden. The first section of the Bill was merely declaratory and confirmatory of the impost in certain districts of the Central Provinces in which it had been hitherto collected by virtue of the orders of the Executive Government of India, which under

the Indian Councils' Act had the force of law. But as it had been found necessary to alter and re-adjust the assessment in regard to the exigencies of the revenue, and the circumstances of the districts and persons affected by its incidence, it was considered expedient to place the tax on the basis of a legal enactment. The second section, therefore, prescribed the limitations under which the tax should be levied, the assessment varying from two to three per cent. on the estimated income of the house-holder, according as that income might be under or over Rs. 300 per annum, the maximum of the assessment being fixed at Rs. 1,000. Section 3 enabled the Local Government with the consent of the Governor General in Council to frame regulations for the assessment and collection of the tax. By another section the Governor General in Council was empowered to extend the tax to districts of the Provinces other than those named in the first section.

The Pándharí tax was at present collected only in about one-half of the districts of the Central Provinces, and the proceeds were about three lakhs, the whole of which was credited to the Imperial treasury, and might be considered to that extent as a refund of the grants for local objects annually made from the revenues of India.

As it was of importance that the Bill should become law without delay, he proposed, with the permission of the Council, to pass it through its remaining stages at the next meeting.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to make further provision for suits by and against the Comptoir D'Escompte of Paris—The Hon'ble Messrs. Hobhouse and Cowie and the Mover.

The Council adjourned till the 25th January 1867.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (Legislative

CALCUTTA,
The 18th January 1867.

Government of India Central Printing Office.—No. 126 L. D.—1-9-67.—50.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 25th January 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Honour the Lieutenant Governor of Bengal.
His Excellency the Commander-in-Chief.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Colonel H. M. Durand, C. B.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble H. B. Riddell.
The Hon'ble J. E. L. Brandréth.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble C. P. Hobhouse.
The Hon'ble J. Skinner.
The Hon'ble D. Cowie.

PÁNDHARÍ TAX (CENTRAL PROVINCES) BILL.

The Right Hon'ble MR. MASSEY introduced the Bill to provide for the re-assessment of the Pándharí tax in certain parts of the Central Provinces, and moved that it be referred to a Select Committee with instructions to report in a fortnight. He said that the tax had been levied under one form or another for many generations in the Districts of the Nagpore country. When he moved for leave to introduce the Bill, he proposed, if the Council should have no objection, that the Bill should be passed through its ulterior stages on the present occasion. But subsequently, on advising with His Excellency the Viceroy and other Members of the Council, it seemed to him that the Bill might be materially improved by being subjected to detailed examination at the hands of a Select Committee. It might, for instance, be worthy of

consideration whether the assessment should not be more strictly defined, and whether Europeans should not be included within the operation of the proposed measure. But that point with others would be more carefully considered in Committee. He therefore proposed to withdraw that part of his motion which referred to the passage of the Bill at once, and to substitute the regular course of moving that the Bill be referred to a Select Committee with instructions to report in a fortnight.

The Motion was put and agreed to.

ESCAPED CONVICTS' BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill for the more effectual punishment of persons resisting lawful apprehension, and for other purposes.

INDIAN PENAL CODE EXTENSION (STRAITS SETTLEMENT) BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to extend the Indian Penal Code to the Straits' Settlement.

ALTERATION OF DISTRICTS (PANJAB) BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to empower the Lieutenant Governor of the Panjáb to create new and to alter the limits of existing districts in the territories under his government.

REMOVAL OF PRISONERS' BILL.

The Hon'ble MR. MAINE also moved that the Report of the Select Committee on the Bill to make further provision for the removal of prisoners be taken into consideration. He said that on this Bill the Select Committee had no observations to offer. In point of fact the Bill was solely composed of old material, although in form that material had undergone some alteration. The first Section proposed to authorize the Local Government to remove any European prisoner from the jail in which he might be confined to any other jail under the same Government. As the law stood, such removal could only be effected by permission of the Governor General in Council, a requirement which had been found to cause injurious delays. The second Section authorized the Local Governments to remove to asylums criminal lunatics sentenced by the High Courts; a power which had been lost by the repeal of Act IV of 1849. The Section was almost literally copied from Section 396 of the Code of Criminal Procedure. The third Section of the Bill empowered the Governor

General in Council to remove any prisoners, whether European, American or Native, from the jail in which they were confined to any other jail in British India. This was a mere extension of the power which he possessed at present, of removing State prisoners and Europeans and Americans sentenced to penal servitude, and which in the case of the latter class of offenders was occasionally exercised for the purpose of removing them from Bengal to the jail established on the Nilgiri Hills.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then moved that the Bill be passed.

The Motion was put and agreed to.

PUBLIC GAMBLING BILL.

The Hon'ble MR. RIDDELL moved that the Report of the Select Committee on the Bill to provide for the punishment of public gambling and the keeping of common gaming-houses in large towns in the North-Western Provinces of the Presidency of Fort William, and in the Panjab, Oudh, the Central Provinces, and British Burmah, be taken into consideration. He said that the alterations which the Committee had made were detailed in the report which had been laid before the Council on Friday week. As the Bill was originally drafted, its provisions were confined to towns containing not less than five thousand inhabitants. Had this restriction been maintained, the Act would have been inoperative in many places to which it was of importance that it should extend. Where a large proportion of the population consisted of domestic servants—such as Nynee Tal, Murree, and Dalhousie, where it was doubtful whether the number of inhabitants amounted to five thousand, but where there could be no doubt that gaming-houses should, if possible, be suppressed—the limitation was not recommended by any local authority. The Committee had amended the Bill by striking out the restrictive words, and by authorizing the Local Governments to extend the Act by public notification to any city, town or suburb, and also to any Railway station or place within three miles of a Railway station. The necessity for this latter provision was shown in the discussion which took place when the Bombay Act for the suppression of gambling was passed, and it was included in that Act.

The person who might be authorized to enter a gaming-house would, under Section 5, be an Officer of Police not below such rank as the Local Government might appoint. In the Bill as referred to the Committee, the words

"below the rank of Inspector" were used, but as the denominations of Police Officers varied in the different territories to which the Bill extended, it had been thought advisable to authorize the Local Governments to declare by what rank of Police Officers warrants issued under the Act should be executed.

Sections 7, 10 and 15 had been added by the Committee. The two first were taken from the Act of Parliament 17 & 18 Vic., cap. 38. Section 7 imposed a penalty on persons found in a gaming-house who might give false names or addresses. Section 10 authorized a Magistrate to require any person found in a gaming-house to give evidence, and declared that no person so required to be examined should be excused from answering, on the ground that his evidence might criminate himself. By a subsequent Section, such a witness was protected from prosecution under the Act if he made true and faithful discovery, to the best of his knowledge and belief, of all things as to which he should be examined. The complete success which attended the passing of the Act of Parliament from which these Sections were taken, was, he (MR. RIDDELL) believed, mainly due to their provisions. He could not hope that they would be equally successful in India, but they certainly would materially aid and strengthen the power of the law, without opening a door to Police corruption and oppression.

Section 15 provided that an offence under Sections 3 and 4, if committed more than once, should be liable to enhanced punishment within the limits of the proviso.

The Bill did not do what, he believed, was desired by every Hindú or Muhammadan of respectability in India. It did not restore the former law, under which gambling was an offence, but it would, he hoped and believed, have a beneficial effect in checking and punishing the practices of those who made a trade of gambling, and he therefore commended it to the Council.

The Hon'ble MR. MAINE said he had only one remark to make on the Bill, of which he entirely approved. He had received a paper signed by four or five Native gentlemen and one European gentleman in Lucknow, which could hardly be called a legislative paper (for it took the form of a private letter addressed to himself), but which he had read to the Select Committee. The writers strongly approved of the Bill as a whole, but objected to its supposed application to cock-fighting, and suggested that cock-fighting should be placed on the same footing as horse-racing was placed upon by another Bill before the Council. MR. MAINE was not sure that he could accept the proposition with which these gentlemen started, that there was no difference in principle between

cock-fighting and horse-racing, for he understood that, to the animal principally concerned and interested, there was considerable difference, inasmuch as MR. MAINE was told that the cock was invariably killed. But what he wished to point out (and this was his reason for mentioning the letter) was that the writers were under a complete misapprehension. His Hon'ble friend's Bill was in the main a Bill to put down common gambling-houses kept for profit. The only part of the measure which applied to cock or quail-fighting was the 13th Section, which prohibited such sports in a public street or thoroughfare. Cock-fighting in a private house or ground would remain on the same legal footing as it stood before the passing of the Bill; and the law on the subject was considerably less stringent in India than in England. The provision of the Bill was in short a simple measure of police. Whatever might be MR. MAINE'S opinion of cock-fighting, he thought that, in the present state of the country and people, it would be premature for the legislature to attempt to put it down so long as it was confined to private houses. MR. MAINE believed that it had been the intention of His Highness the Nawab of Rampur to address to the Council some observations on the Bill. The Nawab was, however, indisposed, and MR. MAINE referred to His Highness' intention for the purpose of suggesting that the Secretary should read to the Council the manuscript which had been received.

The Secretary then read a paper to the effect following :—

His HIGHNESS the NAWAB of RAMPUR "had carefully perused the Bill and gave it his unreserved support. The advantages it would bestow on the community were many and important; but as he wished to be as brief as possible, and their enumeration would take up much time, he would only remark that last year he had abolished gambling in the territory of Rampur with the most beneficial results, theft and crime generally having since sensibly diminished; this was well known to the authorities in Rohilkand, and they highly approved of the action taken by him. Finally, he would beg to observe that the proposed measure showed how careful was the present head of the Government of the best interests and welfare of the people."

The Hon'ble MR BRANDRETH said that the principal amendment which had been made in the Bill was, as stated by the Hon'ble Mr. Riddell, that by which the clause restricting the application of the Bill to towns containing more than 5,000 inhabitants was struck out. As a member of the Select Committee, he agreed in the amendment so far as it went, though he would have wished that it had been carried further. By Section 2, the Lieutenant Governor

or the Chief Commissioner, as the case might be, was authorized to extend the provisions of the Act to any city, town, suburb, or railway station-house. He (Mr Brandreth) did not see why the Lieutenant Governor was restricted to cities, towns, suburbs, and station-houses. Why should he not be allowed to extend the Act to any village or other place to which he might see fit to do so? Supposing a public gaming-house had been closed in any town, the Bill as it stood, from its containing no prohibition to that effect, would virtually encourage the person who kept the gaming-house to remove it to some village close by. For the purposes of municipal taxation, it had sometimes been found necessary to group one or more villages with a town, and he did not see how the suppression of public gambling could be effectually carried out without a similar provision. By the same Section, the Act might be extended to any place not more than three miles from a railway station-house, but no provision was made for enforcing the Act in a village adjoining any town. In the papers received from Kumaon, the hill villages were described as places where gaming prevailed to a very great extent and much crime resulted. If the Lieutenant Governor did not consider it sufficient to extend the Act to any particular towns or villages by name, he should be allowed to group any number of them together and to extend the Act to any district, parganna or other portion of a district as he might see fit. The rules formerly in force in the Panjáb, and which were said to have worked satisfactorily, contained no restriction such as that in the Bill. Mr. Brandreth did not know, therefore, why the benefit derived from these rules should be curtailed by such a restriction as that to which he had referred. He was aware that the other Members of the Select Committee did not agree to give the Bill such a wide application as he desired. As however, he held a different opinion, he thought it due to himself to state it; but he did not intend to press the matter in opposition to the opinion of the other Members.

He had one or two other remarks to make in regard to the Bill. In the Statement of Objects and Reasons, they were told that certain executive orders having the force of law were for some years in force in Oudh, the Central Provinces, and the Panjáb; but that did not give quite a clear account of the facts. Gaming was certainly prohibited long before the passing of the Calcutta and Howrah Police and Conservancy Acts, the Sections of which were in force in Oudh, the Central Provinces, and the Panjáb. Gaming was prohibited under what was called the General Regulation. By that Regulation all things which were offences under the Muhammadan law were punishable by the Magistrate with six months' imprisonment besides fine. They were further told that, as the law

at present stood, persons could not be prosecuted for keeping gaming-houses. It was not to be supposed that the framers of the Indian Penal Code intended to abolish the law which formerly existed on the subject: the Bill therefore remedied a palpable defect in the Code. He questioned whether the Bill would have much effect in preventing gaming as a cause of crime. From the papers before the Select Committee, it appeared that it was with a view to prohibit gaming, because it led to such crimes as theft and even murder, that legislation was desired. He thought that it would be found that private gaming, which was much more resorted to than public gaming, was, in the great majority of cases, the cause of such crimes as were attributed to gaming generally. In Kumaon it did not seem likely that public gaming could prevail to any great extent. In Burmah, though public gaming-houses were also mentioned, yet the people there were determinedly addicted to the vice of private gambling. In the Panjáb it was not that there was much public gaming, but certain bad characters met together for the purpose of gaming in some secret place, probably a house or jungle in a secluded spot; and they were driven to crime to repair their losses. Gaming was prohibited by the Muhammadan law; and he thought that if some law to prohibit gaming generally were well devised, it would meet with the approval of the better classes of the people of the country. He saw great difficulties, however, in the way of any attempt to put down gambling of any other description than that contemplated by the present Bill. He would merely state his opinion that those officers who wished to put down gaming as a cause of crime would hardly attain their object under the provisions contained in the Bill.

The Hon'ble MR. RIDDELL entirely agreed with the Hon'ble Mr. Brandreth as to the desirability of discouraging gambling of every description. But he understood that it was the desire of Government to confine the interference of the Police to public gaming. It was thought inexpedient to give the Police the power to arrest persons gambling in private houses: he therefore considered himself debarred from framing a Bill for the general suppression of gaming. He would have been exceedingly glad if they could provide, as in the Muhammadan Law, for the entire prohibition of gaming, but as that was not to be done, the Bill had been framed to meet the evil so far as they could.

The Hon'ble MR. MAINE said that no doubt the opinion of the Local Governments who had asked for the Bill was exactly that which his Hon'ble friend (Mr. Riddell) had just indicated, namely, that the interference of the Bill for the prevention of gambling beyond the limits of towns might prove vexatious and oppressive. For that reason the Bill had been limited as

proposed. Whenever the Penal Code came before the Council for revision, the general question might with propriety be discussed; but on the question whether gambling ought to be condemned in India, as a thing *per se* evil, many considerations, to which it was not necessary now to refer, would have to be entertained. Nobody denied that the Bill so far as it went was desirable.

The Motion was put and agreed to.

The Hon'ble MR. RIDDELL also moved that the Bill as amended be passed.

The Motion was put and agreed to.

HORSE-RACING BILL.

The Hon'ble MR. MAINE asked leave to postpone his motion that the Report of the Select Committee on the Bill to legalize horse-racing in India be taken into consideration.

Leave was granted.

PENALTY FOR PURCHASING SOLDIERS' NECESSARIES BILL.

The Hon'ble COLONEL DURAND presented the Report of the Select Committee on the Bill to reduce the pecuniary penalty for purchasing from Soldiers arms, ammunition, clothes, and other articles.

COMPTOIR D'ESCOMPTE BILL.

The Hon'ble MR. MAINE asked leave to postpone the presentation of the Report of the Select Committee on the Bill to make further provision for suits by and against the Comptoir D'Escompte of Paris.

Leave was granted.

The following Select Committee was named—

On the Bill to provide for the re-assessment of the Pandhari tax in certain parts of the Central Provinces—The Hon'ble Mr. Maine, the Hon'ble Colonel Durand, the Hon'ble Messrs. Riddell, Brandreth, Hobhouse and the Mover.

The Council adjourned till the 1st February 1867.

WHITLEY STOKES,

Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 25th January 1867

Government Central Press.—No. 561 L. D.—9-5-76.—50.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 1st February 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant Governor of Bengal.
His Excellency the Commander-in-Chief.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Hon'ble Colonel H. M. Durand, C. B.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble H. B. Riddell.
The Hon'ble E. L. Brandreth.
The Hon'ble C. P. Hobhouse.
The Hon'ble D. Cowie.

ESCAPED CONVICTS' BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill for the more effectual punishment of persons resisting lawful apprehension and for other purposes, be taken into consideration. He said that the Committee had a good deal amplified the Bill, but the changes were only extensions of its principle. MR. MAINE would repeat the history of the proposal. Special laws and local laws were defined in Sections 41 and 42 of the Penal Code, and such special and local laws were expressly saved by an earlier Section. Section 40 defined the word offence as follows:—

"The word 'offence' denotes a thing made punishable by this Code."

Hence it appeared that the offences mentioned in the Code were always offences against the provisions of the Code itself, and not against the provisions of any special or local law. The inconveniences of this limited definition did not appear to have at first attracted notice; but at length the results

of its application to Sections 224 and 225 became serious. Mr. Maine would read the important parts of those Sections :—

"Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

"Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

It followed from the combination of the limited definition of 'offence' with the use of the word 'offence' in these Sections, that, when a man had committed one of those offences which, if judged by their possible consequences, are among the most serious of which any one can be guilty—offences, namely, against the Railway Act—he might with impunity resist apprehension, or escape from custody, and nobody assisting him could be punished. A Bill to make such resistance or escape punishable was accordingly passed by the Bengal Local Council, and simultaneously applications came to the Government of India from several Local Governments for a measure to the same effect. The difference between the Bengal Act and the Bill submitted to the Council was one only of form. The Bill introduced by Mr. Maine was referred by the Council to a Select Committee, which had the advantage of the presence of His Hon'ble friends Mr. Shaw Stewart and Mr. Hobhouse, and, incidentally, of Mr. Brandreth, all of whom had considerable experience in administering the Penal Code and the special Criminal Law of India. The Hon'ble Mr. Riddell, who had had much to do with one of the most important special laws of British India, the Post Office Act, was also a Member. By this Committee, the Penal Code was subjected to very close examination and scrutiny, and it was discovered that the consequences of the limited nature of the definition penetrated much further than was supposed. There were found to be many acts injurious to society, which might be committed in India with impunity, because the general description of those acts, given in the Code, embodied the word 'offence' and, as had been stated, 'offence' within the meaning of the Penal Code did not embrace offences against special and local laws. For example, if an offence were committed against the Railway and the Post Office Acts, the giving false information about it, the taking a gift to screen the offender, and the offering a gift in con-

sideration of screening him, were not punishable acts. The first expedient which suggested itself to the Committee was simply to amend the definition of 'offence,' so as to make it embrace offences against special and local laws. No difficulty would have arisen from this course so far as special laws were concerned; but the local laws of India were extremely numerous, and some of the offences made penal by them were of the pettiest description; for example, it was a penal act, and very properly, in Bengal, to drive an elephant on the wrong side of the road, and in Calcutta it was an offence in a coachman to drive after dusk without lights. The Committee felt that it could not seriously propose to the Council such legislation as would make it penal to "harbour" the delinquent coachman. Now, if the Committee had embodied in the Bill references to all the local laws in existence throughout India, the Bill would have expanded into a Code. The solution of the difficulty which they had adopted was no doubt arbitrary, but MR. MAINE thought the Council would agree with him in thinking it as good as could be devised under the circumstances. There were certain acts which the Committee thought ought to be punishable, however petty was the offence against special or local laws upon which the general description of those acts in the Code hinged. There were certain other acts which they considered ought only to be punishable when the offence against special or local law to which they related was of some magnitude, and, as a guarantee for the magnitude of the offence, it was proposed that it should be one which, under special or local law, should be punishable with a minimum of six months' imprisonment. MR. MAINE would read the two lists. The first ran thus:—

187. Omission or neglect to assist a public servant.

194, 195. Giving or fabricating false evidence with intent to procure a conviction.

203. Giving false information respecting an offence committed.

211. Making, with intent to injure, a false charge of an offence.

213. Taking a gift, &c., to screen an offender.

214. Offering a gift or restoration of property in consideration of screening an offender.

221, 222. Intentional omission to apprehend on the part of a public servant bound to apprehend.

223. Escape from confinement negligently suffered by a public servant.

327. Voluntarily causing hurt to extort property, or to constrain to an illegal act.

328. Causing hurt by means of poison, &c., with intent to commit an offence.

329. Voluntarily causing grievous hurt to extort property or to constrain to an illegal act.

330, 331. Voluntarily causing hurt or grievous hurt to extort confession or to compel restoration of property.

347. Wrongful confinement for the purpose of extorting property or constraining to an illegal act.

348. Wrongful confinement for the purpose of extorting confession or compelling restoration of property.

388. Extortion by threat of accusation of an offence punishable by death or transportation, &c.

389. Putting a person in fear of accusation of an offence in order to commit extortion.

445. House-breaking.

The numbers referred to the Sections of the Penal Code. The second list ran thus :—

141. Unlawful assembly.

176. Omission to give notice or information to a public servant by a person legally bound to give notice or information.

177. Furnishing false information.

201. Causing disappearance of evidence of an offence committed.

202. Intentional omission to give information of an offence by a person bound to inform.

212. Harbouring an offender.

216. Harbouring an offender who has escaped from custody, or whose apprehension has been ordered.

441. Criminal trespass.

Another and a very obvious improvement proposed by the Committee, was the application of Section 222 of the Code to all persons lawfully committed to custody. This would meet the case put by the Government of Bombay, where a keeper of a Lunatic Asylum allowed the escape of a lunatic under a criminal accusation. Perhaps the only doubtful amendment suggested, was the provision of a punishment for persons escaping from custody to which they had been committed for failure to give security under Chapter XIX of the Code of Criminal Procedure. When this Section was first proposed to the Committee, MR. MAINE was much disposed to object to any extension of the stringency of the provisions of Chapter XIX, on the ground that, looking at the question from an English point of view, the offence at which that Chapter was aimed was the offence of having neither money nor friends. To this it was answered, that such was really the offence, for although the not having money might not amount, even in India, to a criminal omission, yet the having no friends to give security did, under the system of caste and brotherhood which prevailed in the country, raise some presumption of misconduct. MR. MAINE was further informed that the High Court had, by a circular order, directed that these

Sections were not to be capriciously applied, but to be confined to cases in which there had been a previous conviction, or an overt act of misconduct. Knowing this, therefore—knowing that officers charged with the administration of districts highly valued this Chapter, as being absolutely necessary for the peace and comfort of the population, and admitting at the same time that, whatever were the policy of the law, persons imprisoned under its provisions ought not to be allowed to break jail with impunity—MR. MAINE had finally withdrawn his opposition to the Section. The only further observation he had to make was, that the enquiry and discussion had rather increased than diminished his respect for the framers of the Penal Code. At the first blush, it seemed as if they had made a mere mistake; but more careful consideration showed that they had good reason for limiting the definition of 'offence.' Probably, as respected all special and local laws passed before the enactment of the Code, they contemplated some such legislation as the present. As regarded all special or local laws passed subsequently to the Code, the fault lay in those laws, and not in the Code itself. The proper form of drafting such enactments was to insert a Section such as appeared in the recently passed Gambling Act, providing that offences against the Act should, if that was the intention, be deemed to be offences against the Code.

The Hon'ble MR. HOBHOUSE said that, as he was principally responsible for the introduction of Section 3 of the Bill, he thought it necessary to give some explanation of the reasons which had induced him to consider such a Section necessary. Under Chapter XIX of the Code of Criminal Procedure, when a person was proved by habit or repute to be a person of bad livelihood, or to be a notorious robber, dacoit, or receiver of stolen property knowing it to be stolen, or when he had no ostensible means of livelihood, and yet lived at a considerable expense, he was called upon to give security for his good behaviour for a period which might extend to three years. He believed that such persons, as was well known to every District Officer, were about the worst characters in the district. They were the leaders of the gangs of dacoits and the receivers of property stolen by dacoity; while they were present in the district such things would go on, and in their absence they would be checked. As the law stood, such persons, who were not only the leaders of dacoities, but were usually persons who had been previously convicted, might with impunity escape from legal custody and go through the district and continue their unlawful practices. It seemed to him, therefore, that if any class of persons might appropriately be punished under Section 224 of the Penal Code for escaping or attempting to escape from lawful confinement, the persons whom he had described should be punished. With that intent he had proposed Section 3 of the Bill.

He would also offer a few remarks on Section 2, which was introduced at the suggestion of the Hon'ble Mr. Shaw Stewart, who was not present in Council that day. It was intended, as the Hon'ble Mr. Maine had stated, to meet the case of persons who were ordinarily styled criminal lunatics. The procedure under which such persons were placed in custody was this. When the Magistrate or Sessions Judge had reason to believe that any person charged with an offence was of unsound mind, he was committed to custody until such time as his state of mind might be ascertained, and until he was brought to trial again, and if at such time the person was still insane, he was sent to one of the lunatic asylums of the province. Such persons were usually charged with offences of a most heinous nature. In either view—that is, if they had committed offences in a sane state and had assumed insanity to escape the consequence of their offences, or if they had committed the offences under the effects of insanity—they should not be allowed to go at large to do injury. Under the present law such persons were committed for safe custody, but if any person—say a Police Officer—permitted them to escape, he was not punishable. The insane person being in lawful custody, the Police Officer should be responsible, and should not be at liberty to let him go. If a public officer was punishable for allowing any person who was an offender to escape, he was also rightly punishable for letting any person escape who was placed in his lawful custody, the essence of the Police Officer's offence being that the person he permitted to escape was in his custody.

The Motion was put and agreed to.

The Hon'ble MR. MAINE, with the permission of His Excellency, then moved the following amendments :—

That the words "and for other purposes" be added to the title substituted by the Select Committee; and that the words "whether with or without fine" be added at the end of Section 1.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill as amended by the Select Committee, with the additional amendments now adopted, be passed.

The Motion was put and agreed to.

INDIAN PENAL CODE EXTENSION (STRAITS' SETTLEMENT) BILL.

The Hon'ble MR. MAINE also moved that the Report of the Select Committee on the Bill to extend the Indian Penal Code to the Straits' Settlement,

be taken into consideration. He said that the only alterations which the Committee had made in the Bill were those that were necessary in order that it might follow suit with the Bill which the Council had just passed into law. MR. MAINE would have submitted the report without remark, if he had not thought he ought to say that on a former occasion he had somewhat exaggerated the reluctance of the Straits' Settlement to adopt this great Chapter of Indian legislation." On carefully examining the older papers he found that, ever since the Penal Code was passed, the Government of the Settlement had been pressing for its extension to that community. It was rather the Government of India than the Straits' Settlement which appeared to have postponed the extension, partly, no doubt, because all questions connected with the Straits were put off in view of their expected separation; but partly because of the objections entertained by one single Judge. As for the community, the Governor of the Straits had more than once made the very sensible remark that all communities, and especially the community of the Straits, were apt to care very little about the criminal law under which they lived. This appeared to MR. MAINE to be true. What communities cared for, and especially European communities, was evidence and procedure; or in other words, the modes in which convictions were arrived at, not the technical definitions of crimes, nor the punishments allotted to them, unless they were cruel and barbarous. The truth was that the great majority of mankind did not commit crimes at all, or if they did, they committed them under the influence of impulse or in the expectation that they would not be found out. The great opponent of the extension appeared to have been a former Recorder of Singapore, who said that he "deprecated any change in the existing law, which was found to work well, and was not productive of inconvenience or expense from uncertainty, having the settled decisions in England to follow," whereas the introduction of the Indian Penal Code, "so novel in its phraseology and form, and embracing so extensive a subject," would lead to conflicting decisions by different tribunals, thus engendering doubt and uncertainty in the administration of the law, the removal of which would require "many years, and many inconvenient and expensive proceedings." It would be difficult, MR. MAINE thought, to cite a prediction which had been more signally falsified. He did not believe that there was any enactment of an English legislature covering so large a space, covering indeed the whole of one great branch of jurisprudence, which had given occasion for so few doubts, and had produced so few conflicting decisions as the Indian Penal Code. He wished as much could be said of English Acts of Parliament approaching the Code in magni-

tude. One recent tribute to the merits of the Code might be mentioned. A Commission was lately appointed in England to investigate the law of capital punishment, and among other things they had to deal with the legal definitions of 'murder' and 'manslaughter.' A great number of gentlemen especially versed in Criminal Law were called as witnesses. Some of these had evidently never read the Code; but it was remarkable that those who had done so warmly urged the expediency of altogether suppressing the Common Law definitions and substituting those of the Indian Penal Code. The opinion was the more striking because the definitions of murder and homicide in the Code did not appear to MR. MAINE to be by any means the happiest examples of technical description exhibited by that body of law. The truth was that the first serious blemish which had disclosed itself in the Code was that which the Council had remedied by the Bill just passed into law.

The Hon'ble MR. BRANDRETH wished to state a few points for the consideration of the Hon'ble Mr. Maine before he asked them to pass the Bill. By Section 1 of the Penal Code, the Straits' Settlement was specially excepted from the operation of the Code. What was the reason he (MR. BRANDRETH) was enabled to gather from the published proceedings of the Council that passed the Code. It was in consequence of the mere probability that the Straits would not remain much longer under the control of the Government of India. From the papers laid before the Select Committee on the present Bill, of which Committee he was a member, if he remembered rightly, for he had not seen the papers for some time, the Secretary of State, on the same grounds, entirely objected to the extension of the Code to the Straits. Now, he understood that the Straits would be separated from India from the 1st of April next, and that a separate legislative assembly would be there constituted. He did not think it was desirable that they should anticipate the action of the Straits' legislature with regard to that Bill. The Settlement had already waited five years, and if such a legislature was on the eve of being constituted, why should the Council take work out of their hands which they were more competent to do? Besides, he did not see how the Penal Code could be satisfactorily worked without a corresponding Criminal Procedure Code. He would cite, in support of this opinion, that when it was found that the Procedure Code for India could not be enacted in time to admit of sufficient opportunity for its study and for the preparation of the translations of it into various languages, an amending Act was passed, by which the coming into operation of the Penal Code was postponed from the 1st May 1861 to the 1st January 1862. In the opinion of the Council which passed the Code, it was thought impossible—at all events difficult

and perplexing—to work the Code with the old system of procedure. No doubt there were good reasons for an opinion in which the then members of the Council were unanimous. Those reasons doubtless applied with equal force to the Straits' Settlement. They had an example of the interpretation to which the Code might be liable, in the Bill which had just been passed. The Criminal Procedure of the Straits no doubt enabled the Courts to try all crimes and misdemeanors punishable under the existing law: but was it quite clear that that procedure would be equally applicable to offences under the Penal Code? Would Section 188 of the Code be of any effect without a Procedure Code? It referred particularly to the prevention of disturbances amongst religious bodies. That Section would probably be of great importance in the Straits, as there were a great number of religious sects in that province. Even, however, if other difficulties were got over, and the Courts should succeed in convicting offenders under the Code, how were the sentences to be carried into effect without the Procedure Code? The fine and imprisonment in default of payment of fine were made part of the punishment in every part of the Code; but they would probably be an entirely new feature in the Criminal Law of the Straits. When the Courts awarded fines, how would they recover them without a Procedure Code? Again, he would ask whether it was desirable that the Courts of the lowest grades should have the same jurisdiction as Courts of the highest grade as to fine and the punishment in lieu of fine? Unless a procedure were laid down, he did not see how that could be prevented. The Bill, as it was first drafted, provided for the immediate introduction of the Code into the Straits. That would have left no time for the study by the officers in the Settlement of the provisions of the Code, or for its translation into the various languages prevalent there. The amendment made in the Bill in this respect was therefore no doubt important. But he was not sure whether the amendment, though the only one that could be proposed, was not open on other grounds to considerable objection; whether it would not render the Bill a piece of futile legislation not worthy the character of the Council. It was declared that the Code was good for the Straits, but the duty of providing rules and the procedure system by which alone the Code could be brought into operation was left unperformed. In requiring that the Governor of the Straits' Settlement should appoint the day for the Code to come into operation, were they not wholly laying the responsibility and the risk on the Governor? Were they not investing him with legislative authority in this matter? Long before the Governor would be able to introduce the Code, the legislature of the Straits' Settlement would be constituted; and surely it was to that legislature, and not to the

Governor, that such an important matter should be left. He therefore submitted that, under all the circumstances, it would be better to let the legislature of the Straits' Settlement bring in their own Bill for the introduction of the Penal Code in that Settlement.

The Hon'ble MR. MAINE said that he had some difficulty in dealing with his Hon'ble friend's objections, which, however, should be addressed to the Council, and not to himself. He found that the Report of the Committee distinctly recommended the passing of the Bill, and one of the signatures to that report was 'E. L. Brandreth.' The best answer to his Hon'ble friend was contained in two letters from the Straits' Government. The first of them, dated in April last, stated that "no argument has ever been advanced in favour of the exclusion of the Straits from the benefit of the reforms in Civil and Criminal law that have been effected during the past few years, whilst there are some laws actually in force in the Settlement which are rendered to some extent inoperative owing to the penalties for their violation being inflicted under the Code. The present would be a good opportunity for placing the Straits, as regarded its Criminal law, on the same footing as the rest of India; since, in introducing the reforms, the Settlement would have the benefit of the services of an able lawyer, Sir Benson Maxwell, who is in favour of the measure, and who is possessed of much local knowledge and experience." This letter was, as soon as the severance of the Straits became imminent, followed by another equally urgent, begging that the extension should take place before the Straits' Settlement became an independent Government. Now why did the Governor wish that the extension should be effected by this Council rather than by the legislature which, no doubt, would be attached to the new system of the Straits? Clearly because he thought that this Council was a legislature better fitted for the work. The best proof that he was right lay in the additions to the Code which, through its superior experience, the Council had to-day been enabled to make. Indeed, it was not at all surprising that the Governor of the Straits should be unwilling that its infant legislature should begin with discussing the Penal Code to which the members of that legislature would probably be strange. The supposed objection of the Secretary of State, to which his Hon'ble friend had adverted, did not come to much. All the Secretary of State did was to acquiesce in the decisions of the Government of India, which, as MR. MAINE had explained, had really amounted to evasions of the question. The near prospect of the separation of the Straits had no doubt produced an inclination to have as little to do as possible with difficult points arising in connec-

tion with that community. Passing from his Hon'ble friend's general to his special objections, MR. MAINE could not see that the difference of criminal procedure in the Straits was an insuperable obstacle to the introduction of a body of substantive Criminal law. The criminal procedure of the Straits was, he believed, very much the same as the procedure in force in the Presidency towns, and the Indian Penal Code had been introduced into the Presidency towns without the smallest difficulty. Every argument against the extension of the Code to the Straits in the absence of a Code of Criminal Procedure applied to its extension to Calcutta, Madras and Bombay. MR. MAINE had examined the Penal Code, and he could not find a single provision which might not be worked under any conceivable system of Criminal Procedure. Indeed MR. MAINE could only understand his Hon'ble friend's argument by supposing him to believe that in the Straits there was no criminal procedure of any kind. For that matter, even the chance of there being some small inconsistency between the Code and the procedure in the Straits had been provided against; for the Bill was not to come into operation until the Governor of the Straits introduced it, and his new legislature would have ample time to effect small improvements in procedure, a task to which it would probably be quite equal, though it might not at first be in a position to discuss such a body of law as the Penal Code.

The Hon'ble MR. HOBHOUSE quite agreed with the Hon'ble Mr. Maine in all that he had said as to the wisdom of introducing into the Straits the Penal Code for which they asked. MR. HOBHOUSE would take up the only two substantial objections that the Hon'ble Mr. Brandreth had raised, as to the application of the Penal Code to the Straits, and it seemed to him quite clear, and the wording of the Section quoted would bear out his observation, that even if there was no procedure at all, if a Magistrate were to issue certain orders and if those orders were disobeyed, the persons disobeying them would be punishable under that Section. The Section ran thus:—

"Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction". . . .

First, there must be a servant authorized to promulgate an order. Then the Section goes on to say—

"Whoever . . . . . disobeys such direction, shall, if such disobedience causes or tends to cause obstruction," &c.

Therefore, if there was any public officer in the Straits competent to pass an order, any person knowing of that order, who deliberately violated it, would be punishable.

The other objection was an objection on the subject of fines. He was not sure that he quite understood the objection, but as he apprehended it, it was this. If a fine was imposed, how was it to be levied? He could not but suppose that, in the Straits, fines had been imposed, and that there was a power to enforce their payment; for otherwise the fines would not be imposed. Why there should be any difficulty in levying fines under the Penal Code he could not see. He thought that fines imposed under the Code could be levied under any power that now existed for levying fines in the Straits.

The Hon'ble Mr. Brandreth remarked that Section 61 of the Code of Criminal Procedure applied to the levying of fines. Without that Section he did not understand how they could be levied.

The Hon'ble Mr. Maine said that, if there were an inexorable connection between the Penal Code and the Code of Criminal Procedure, there would be something in his Hon'ble friend's argument. But the point taken by his Hon'ble friend Mr. Hobhouse and himself was, that the Penal Code would fit in with any sort of Criminal Procedure, and that some procedure in the Straits there certainly must be.

The Motion was put and agreed to.

The Hon'ble Mr. Maine, with the permission of His Excellency, then moved the following amendment:—

That the words "whether with or without fine" be added to Section 2.

The Motion was put and agreed to.

The Hon'ble Mr. Maine then moved that the Bill as amended by the Select Committee, with the additional amendment now adopted, be passed.

The Motion was put and agreed to.

ORIENTAL GAS COMPANY EXTENSION BILL.

His Honour the Lieutenant Governor, in moving for leave to introduce a Bill to extend the provisions of Act No. V of 1857 (*to confer certain powers on the Oriental Gas Company, Limited*) to certain places in British India, said

that the Oriental Gas Company was incorporated under Act of Parliament, and had received a certificate of registration under the Limited Joint Stock Companies' Act of 1857, for the purpose of introducing gas-works into different parts of India; and in 1857, an Act of the Indian legislature was passed, giving to the Company the necessary powers for introducing gas-works and supplying the town of Calcutta and its environs with gas, and also to enable them to apply its provisions in other places to which the Act should be extended "by a law to be passed for that purpose." That amounted to no extension at all, for in every instance an Act was to be passed before the extension could take effect. The Gas Company had extended their operations almost through the whole of Calcutta, and also a portion of the suburbs, and they were now desirous to establish gas-works in Howrah; but they had been advised by the Advocate General that the word "environs" did not include Howrah. It was primarily for the purpose of extending their operations to Howrah that they desired the Act, and they also took the opportunity of asking that they should have the power to establish themselves in any other place in British India to which the Local Government might admit them. If the Act related to Bengal alone, it would have been dealt with in the Bengal Council, but as the Company proposed to operate in other parts of India, he asked for leave to introduce a Bill to enable them to exercise their powers in any place with the previous sanction of the Local Government.

The Motion was put and agreed to.

ALTERATION OF DISTRICTS (PANJÁB) BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to empower the Lieutenant Governor of the Panjáb to create new, and to alter the limits of existing, districts in the territories under his government, be taken into consideration. He said that the Committee had in effect proposed the change which he had announced as desirable when the Bill was introduced. He had then admitted that the Bill went too far, and that it might be, from a financial point of view, unsafe to permit the Local Government to create new districts. The Committee accordingly recommended that the words giving this authority should be omitted. The Governor General's power to create new districts under Act XXI of 1836 was expressly reserved by the Bill.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

COMPTOIR D'ESCOMPTE BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to make further provision for suits by and against the Comptoir D'Escompte of Paris.

PRESIDENCY JAILS' BILL.

The Hon'ble MR. MAINE asked leave to postpone the presentation of the Report of the Select Committee on the Bill to amend the law relating to the custody of prisoners within the local limits of the original jurisdiction of the High Courts at the Presidency Towns.

Leave was granted.

MOFUSSIL SMALL CAUSE COURTS REFERENCES' BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to empower Courts of Small Causes in the Mofussil to refer for decision questions arising in the execution of decrees.

PENALTY FOR PURCHASING SOLDIERS' NECESSARIES BILL.

The Hon'ble COLONEL DURAND moved that the Report of the Select Committee on the Bill to reduce the pecuniary penalty for purchasing from Soldiers arms, ammunition, clothes and other articles, be taken into consideration. The Committee had no changes to suggest, and recommended that the Bill should be passed.

The Motion was put and agreed to.

The Hon'ble COLONEL DURAND also moved that the Bill be passed.

The Motion was put and agreed to.

HORSE-RACING BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to legalize horse-racing in India, be taken into consideration. He said that this Bill had stood in his name in the list of business for last Friday. But he had postponed it in consequence of some remarks in a quarter in which he was always glad to see criticisms of their proceedings, a Native newspaper. The writer complained that there was great want of impartiality in putting down many forms of gambling by one enactment, while one form of gambling—horse-racing—was legalized by another. No doubt there was here the same misapprehension which he had noticed last week. The Hon'ble Mr. Riddell's Bill had

not been directed against gaming in general, but against gaming in public gambling-houses, and in the public streets. MR. MAINE was, however, convinced that the mistake was partially caused by the title of the present Bill. Much importance was not attached to such titles, but certainly the Bill was somewhat misdescribed as a Bill to legalize horse-racing, and MR. MAINE would presently propose to call the Bill an Act to amend the law relating to horse-racing in India. The fact was, the Bill did not touch the gambling element in horse-racing, the betting or wagering on the horses. This would remain on the same basis as before. All it provided was that a person should no longer be permitted to evade a promise to subscribe to a prize or stakes. Such subscriptions, MR. MAINE need scarcely say, were often given or promised by persons who never went near the race, and who might even have no very good opinion of horse-racing. The effect of the Bill would merely be to assimilate the law in India to the law in England, and as horse-racing was in the main an European amusement, the assimilation was *primâ facie* desirable. On this point MR. MAINE would make one further remark, though in making it, he approached a subject on which he certainly could not speak with any special authority. Nobody could read the older English Statutes without remarking the emphatic language in which they spoke of the usefulness of horse-racing in improving the breed of horses. Few persons were so unobservant as not to perceive that, at the present moment, a different tone prevailed, and racing was said to produce a special horse adapted to one special purpose, and with little usefulness beyond. The reason appeared to be that, when those Statutes were passed, England was, as regarded horses, an importing country. It drew its horses from all parts of the world, and it seems to have been felt that some greater stimulus towards the introduction of the best blood was required than private tastes and necessities furnished, and that something like a public competition was required between the breeds introduced. If this were true, it might be fairly reasoned that India was at the present moment much in the same condition, as regarded horses, as England was when the law of horse-racing was fixed. MR. MAINE had certainly been speaking on matters beyond the sphere of his own knowledge, but he might cite a dictum of the immediate predecessor of His Excellency the Commander-in-Chief, Lord Strathnairn, who had pronounced that the best horse for India had yet to be discovered, and that it would probably be the result of a fusion of breeds.

HIS EXCELLENCY the COMMANDER-IN-CHIEF said that perhaps he might claim to have some small share of that special knowledge which his friend the Hon'ble Mr. Maine had disclaimed. It had been one of the chief duties of

his office for some years past, to watch the production, breeding and importation of horses for the service of the State. The production of horses here had been by no means on a satisfactory footing. In Northern India breeding was carried on at great expense, whilst in Southern India, the State paid heavy sums for the importation of horses for military purposes. There had been serious complaints on all sides that the horses provided for the State were not fit for the duty. The Hon'ble Mr. Maine had stated the argument very correctly, and had explained the manner in which horse-racing tended to encourage importation as well as the improvement of the breed in this country. We relied to a great extent on importation, and the Council knew that, through the mistaken policy of the Turkish Government, it had happened that the importation of horses from Arabia had been prohibited within the last few years; but importation from Australia and the Cape was going on, and the horses from the former country were of much better quality and larger bone than formerly and of fairly moderate price. The Council ought to consider carefully any measure that would help the Government of India to improve the breeds of horses in the country. He ventured to state that if they did not throw cold water on horse-racing, but assisted it by excluding it from the penal clauses of the Act of 1848, they would do something towards promoting the production and furnishing of good horses in India, whether by importation or by the Stud. When it was considered what high prices were given for horses imported from Arabia, it would be apparent that no person could afford to import such horses except for purposes such as horse-racing. It could not suit the convenience of private individuals to import Arab horses fit for Stud purposes at the prices at which they were now imported, merely for the purpose of riding or driving. Similar remarks applied to importations from the colonies. He would therefore give his full support to the Bill. He would take that opportunity of stating that he differed from one of the conclusions arrived at by the Supreme Government last year. He thought that it would be good and politic if still more encouragement were given by Government to horse-racing. Following the argument and the analogy of his Hon'ble friend, Government might appropriately give Plates for the purpose. Such Plates, like Queen's Plates in England, might be given for entire horses, mares and geldings from Australia and for entire horses from Arabia, and also for horses *bonâ fide* bred in India. By such means, not only would the Government be a gainer in a military point of view, but they would also be signally benefiting the community at large. The Bombay Government had instituted prizes for the encouragement

of the breeding of horses. At different parts of the country, fairs were held in which horses of all descriptions were brought for sale; but they were of a very poor description, and particularly so in Southern India; and unless horses from other countries were largely imported, he feared that little or no improvement in the breed would take place. He thought that if prizes were given for horses *bonâ fide* imported from other countries, as also for the produce of such imported horses, it would tend greatly to encourage importation and the improvement of the breed, and such a measure would be a good corollary to his Hon'ble friend's Bill. He said this from purely disinterested motives, for he himself never had a taste for horse-racing; but at the same time, in the exercise of his office, he could not but feel greatly interested in the improvement of the Indian cavalry horse, and he thought that the Bill and the measure he had referred to would tend to promote so desirable a result.

The Motion was put and agreed to.

The Hon'ble MR. MAINE, with the permission of His Excellency, then moved as an amendment that the following be substituted for the present title of the Bill:—

"A Bill to amend the law relating to Horse-racing in India."

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

SARÁÍS BILL.

The Hon'ble MR. RIDDELL asked permission to postpone his motion for leave to introduce a Bill for the management of *Saráís*.

Leave was granted.

The Council adjourned till the 8th February 1867.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 1st February 1867.

Office Supdt. Govt. Printing.—No. 111 L. C.—6-2-67.—180.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 8th February 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant Governor of Bengal.
His Excellency the Commander-in-Chief.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Right Hon'ble W. N. Massey.
The Hon'ble Colonel H. M. Durand, C. B.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble H. B. Riddell.
The Hon'ble E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble C. P. Hobhouse.
The Hon'ble D. Cowie.

COMPTOIR D'ESCOMPTE BILL.

The Hon'ble MR. MAINE, in moving that the Report of the Select Committee on the Bill to make further provision for suits by and against the Comptoir D'Escompte of Paris, be taken into consideration, said that he had described the Bill at a recent meeting of the Council. It was one of a few lines, and the Committee had merely made two verbal alterations so as to indicate with greater clearness the person to sue or be sued. The Bill, as altered, provided that the expressions 'Chief Manager of the Agencies in British India of the said Comptoir D'Escompte' and 'Chief Manager' should be taken to include any person for the time being acting as Chief Manager of the said Agencies, or being or acting as Manager of such one of the same Agencies as might be situate within the jurisdiction of the Court in which the suit or proceeding mentioned in any of the six Sections of Act No. VIII of 1864 referred to in the Bill, might be instituted or carried on. The only further observation MR. MAINE had to make was, that he had ascertained from the Calcutta Manager of the Bank that the plea which had given rise to the Bill was entirely the result of a mistake. That this should be so might have been ex-

pected from the great respectability of the Company, and it was likely that the mistake would never have occurred again. It was, however, desirable to make the law provide against even so improbable a contingency as that to which he referred.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

CIVIL COURTS (JHÁNSÍ) BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to define the jurisdiction of the Courts of Civil Judicature in the Jhánsí Division.

PÁNDHARÍ TAX (CENTRAL PROVINCES) BILL.

The Right Hon'ble MR. MASSEY presented the Report of the Select Committee on the Bill to provide for the re-assessment of the Pándharí tax in certain parts of the Central Provinces.

REGISTRATION OF BOOKS BILL.

The Hon'ble MR. HOBHOUSE, in moving for leave to introduce a Bill to provide for the preservation of copies of books published in British India, and for the registration of such publications, said that he thought it necessary to state the circumstances which had led to the present motion. It was an instruction of the Hon'ble the Court of Directors, that copies of all books published in India, which were of any importance or interest, should be sent to England for the purpose of being placed in a library established by that Court for that purpose. It would seem that these instructions had not for many reasons been carefully carried out; and the Directors of the Royal Asiatic Society in England had brought to the notice of the Secretary of State, that European scholars were not able to provide themselves with the current literature of the day published in India. They pointed out that it was very essential that European scholars should either have the books themselves, or that they should be furnished with catalogues of them, and requested that the Secretary of State for India would provide them with such catalogues. The Secretary of State accordingly addressed the Government of India, and requested that a catalogue in the form submitted by the Society might be prepared in India and sent home. He also requested that such catalogue should contain a list of publications already issued, as well as of publications hereafter to be issued, from the Press in India. MR. HOBHOUSE

was not aware what steps were taken in consequence in the other provinces; but in Lower Bengal very careful instructions were given to all the Commissioners, desiring them to procure copies of all books published in their respective districts, and to send catalogues of all books so published. With these catalogues, and the assistance of Mr. Talboys Wheeler of the Home Office, a scheme was matured by Mr. Robinson, the Bengáli Translator to Government, and in accordance therewith, certain advantageous offers were made to publishers if they would help in the scheme. Mr. Robinson went round to the different presses and collected information as to the publications issued by them. In the year 1855, a book was published containing a catalogue of all the publications in India that had issued from the presses within the previous ten or fifteen years; and in 1865, a further list was prepared of subsequent publications. The result was that some 1,500 books were found to have been issued within ten or twelve years. But it was quite clear that that list did not represent all the books published during that time, because there were a very large number of presses, and if they had issued only 1,500 books during ten years, they would have done little or no work. The Secretary of the Asiatic Society, in this country found that the list was very incorrect. The reason was that there was no law which compelled publishers to submit copies of their works, and Mr. Robinson had to prepare his catalogue out of advertisements and from the information received on his visits to the different presses. It followed, therefore, that the catalogue was incomplete and incorrect. To send such a catalogue home was of no sort of use; yet it was most essential that a catalogue of all works published in India should be sent to Europe, and the works also, whenever of any importance or interest; in fact, he thought that all works published in India should be sent to England. The reasons were conclusive. The literature of the day represented or purported to represent the opinions of the people, and it was very essential for the Government to know what was going on amongst them, the tone in which they spoke of the measures of the day and their opinions generally. That was one reason why copies of all books published in the country should be submitted to Government. In a literary and scientific point of view, it was also essential that copies of all works should be put within the reach of scholars in Europe. For these reasons, he had no doubt that a law for the preservation and registration of books should be introduced. As to the exact means by which that registration and preservation should be effected, he thought it would be premature to say any thing now. If permitted to introduce a Bill with such an object, then, on the occasion of introducing it, he would state what he considered to be the best manner of carrying out the object of the Bill.

The Motion was put and agreed to.

SARÁÍS BILL.

The Hon'ble MR. RIDDELL, in moving for leave to introduce a Bill for the management of *Saráís*, said that few persons would be disposed to question the propriety, or rather the necessity, of providing by law for the regulation of places of public entertainment kept by private persons, and especially of common lodging-houses frequented by the poorer classes. Saráís in India partook of the nature of a place of public entertainment, and also of that of a common lodging-house. If, therefore, he satisfied the Council that the law on the subject in the North-Western Provinces was defective, or rather ineffective, and that the want of an effective law had been practically felt, he should, he conceived, have justified the motion he had made.

The only existing law relating to Saráís was a Police Regulation in clause 5, Section 11 of (Bengal) Regulation XIV of 1807, according to which *Bhatiáras* or other persons in charge of the public Saráís were bound to report daily to the Police the arrival and departure of travellers and of all persons of suspicious appearance. No penalty was attached to a disregard of the rule, but practically he believed that the reports had been made, and possibly in some cases had been useful; no power, however, existed in the North-Western Provinces by which cleanliness and rules for conservancy could be enforced in Saráís, or by which the owner could be required to maintain them in safe and habitable repair. The consequence was that the buildings, gates and walls were often in a ruinous state, and as the Inspector General of Police reported, every opportunity was afforded for the operations of thieves and robbers, and the Magistrate was powerless to enforce his orders for repairs. The same officer stated that the instances of travellers being robbed in Saráís and in Puraos, or halting places in the open, without redress were innumerable.

The extension of Railroads, by greatly increasing the number of persons who must resort to Saráís and Puraos, must of course increase the inconvenience of the existing state of things.

The Government of the North-Western Provinces, on the representation of the Inspector General of Police, had asked that a law should be made applicable to Saráís and Puraos in the North-Western Provinces. Accordingly, in the Bill which he hoped to have the honour of introducing, he had attempted to provide for the protection of travellers from robbery, and for the enforcement of cleanliness, and at the same time had endeavoured to avoid all arbitrary interference with property. The powers given in the Bill to the Local Government and Magistrate of the District were similar to those given to

Her Majesty's Secretary of State for the Home Department and to the 'local authority' by the Lodging-Houses and Public Health Acts.

As, however, any discussion of the details of the proposed Bill would be premature, he would not trouble the Council further at present, having, he hoped, said sufficient to show that there was a *primâ facie* justification for legislation on the subject.

The Motion was put and agreed to.

ORIENTAL GAS COMPANY EXTENSION BILL.

His Honour the LIEUTENANT GOVERNOR introduced the Bill to empower the Oriental Gas Company, Limited, to extend their operations to certain places in British India, and moved that it be referred to a Select Committee with instructions to make their report in one week.

The Motion was put and agreed to.

MURDEROUS OUTRAGES (PANJÁB) BILL.

The Hon'ble MR. BRANDRETH presented the Report of the Select Committee on the Bill for the suppression of murderous outrages in certain districts in the Panjáb.

PANJÁB MUNICIPAL BILL.

The Hon'ble MR. BRANDRETH also presented the Report of the Select Committee on the Bill to provide for the appointment and maintenance of Municipal Committees in the Panjáb.

The following Select Committee was named:—

On the Bill to empower the Oriental Gas Company, Limited, to extend their operations to certain places in British India—The Hon'ble Messrs. Maine and Hobhouse and the Mover.

The Council adjourned till the 15th February 1867.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 8th February 1867.

Office Suptd Govt. Printing.—No. 111 L C—11-2-67.—190.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 15th February 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant Governor of Bengal.
His Excellency the Commander-in-Chief.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Colonel H. M. Durand, C. B.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble C. P. Hobhouse.
The Hon'ble J. Skinner.
The Hon'ble D. Cowie.

MOFUSSIL SMALL CAUSE COURTS REFERENCES BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to empower Courts of Small Causes in the Mofussil to refer for decision questions arising in the execution of decrees, be taken into consideration. He said that the changes made by the Committee had been announced by him when the Bill was introduced. The Bill had arisen out of a doubt expressed by the High Court, North-Western Provinces, as to whether the word 'trial,' as used in Section 22 of the Small Cause Courts' Act of 1865, was sufficiently extensive to include the whole course of a suit down to the execution of a decree. He had also stated that the Committee would consider whether references should be permitted on points arising in the proceedings previous to the hearing of a suit. The Committee had considered the point,

and the result was the alteration of the 1st Section of the Bill into the following:—

"1. If at any point in the proceedings previous to the hearing of a suit under the said Act, or if in the execution of the decree or order in any such suit, any question of law or usage having the force of law shall arise, the Court, in suits for an amount not exceeding five hundred Rupees, may, either of its own motion or on the application of any of the parties to the suit, and in suits for an amount greater than five hundred Rupees, shall, draw up a statement of the case, and refer it with the Court's own opinion thereon to the decision of the High Court, within whose jurisdiction such Court may be situate. If the question has arisen previous to the hearing, the Court may either stay such proceedings, or proceed in the case notwithstanding such reference, and pass a decree contingent upon the opinion of the High Court upon the point referred. If a decree has been made, the execution of the decree shall be stayed until the receipt of the order of the High Court upon such reference."

Power to refer questions arising previous to the hearing or in the execution of decrees or orders.

The Section concluded by enacting that all the provisions therein contained should apply, *mutatis mutandis*, to the stating of a case by a Registrar. MR. MAINE anticipated that the Council would accept these amendments, for it was obviously desirable that as many cases as possible should be referred to the High Courts.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

MURDEROUS OUTRAGES (PANJÁB) BILL.

The Hon'ble MR. BRANDRETH asked leave to postpone his motion that the Report of the Select Committee on the Bill for the suppression of murderous outrages in certain districts of the Panjáb be taken into consideration.

Leave was granted.

CIVIL COURTS (JHANSÍ) BILL.

The Hon'ble MR. MAINE asked leave to postpone his motion that the Report of the Select Committee on the Bill to define the jurisdiction of the Courts of Civil Judicature in the Jhánsí Division be taken into consideration.

Leave was granted.

STAMP DUTIES BILL.

The Hon'ble MR. HOBHOUSE, in moving for leave to introduce a Bill to amend the law relating to stamp-duties, said that he was afraid that he

should have to occupy the time of the Council considerably that morning, but he trusted that the importance of the measure would be his excuse for doing so. The stamp-law, as no doubt the Council was aware, was divided into two portions; that which referred to duties on bonds, agreements, and the like between parties, and that which referred to duties on judicial proceedings. The amendments he proposed to introduce had reference only to stamp-duties on judicial proceedings. He believed, as far as he could make out, that this Bill owed its origin to a scheme which the Hon'ble Mr. Roberts from time to time had proposed to introduce. As far as MR. HOBHOUSE could understand Mr. Roberts' original scheme, it was this: Mr. Roberts pointed out, first of all, that there were great inequalities in the present scale of institution-stamps in Civil suits. He showed that, in suits of a very small value, the stamp-duty was in some cases even more than sixty-five per cent. of the value of the suit. On the other hand, in suits of a very large value—above a lákh of rupees for instance—the stamp-duty was very small, somewhat less than a quarter per cent. of the value of the suit. He first proposed that there should be a uniform duty of twelve per cent., and afterwards proposed that that duty be charged up to a certain sum, and that beyond that sum a smaller duty be levied, and recommended that the money so obtained should be employed in the improvement of the Courts, calculating that something like a crore and a quarter rupees would be obtained. These recommendations were spread over a period of many years, and the last of them did not reach the Government of India till the end of March 1866. In the mean time, Mr. Strachey had submitted three plans to the Government of India for the improvement of the Courts. He suggested, in the first instance, that the salaries of the ministerial officers of the Courts of District Judges and Magistrates, Collectors and Commissioners, should be very materially increased. That was the recommendation made by Mr. Strachey in the beginning of 1865. In 1866 he proposed that the salaries of the lower grades of Judges, such as Principal Sadr Amíns, Sadr Amíns, Munsifs and the like should be increased; and again, that the salaries of the ministerial officers of those Courts should also be materially increased. He would read to the Council some of the reasons which Mr. Strachey gave for proposing these measures. He said—and his remarks were worthy of attention—with reference to the salaries of the officers of the Courts of Commissioners, District Judges, and others—

"The great rise in prices which has occurred during the last few years, which will doubtless be permanent, and which has probably not nearly reached its limit, makes it evident that it will not be possible to avoid this question much longer. The salaries attached to these offices have

long been so insufficient that it has seemed unreasonable to expect men of honesty and zeal and efficiency to accept them. The wonder has really been that the duties have been upon the whole discharged so well, rather than that there should have been so much reason to complain of dishonesty and incapacity.

But the matter is now becoming far more serious. It cannot be doubted that, at the present time, it is really hardly possible for a large proportion of our ministerial officers to live honestly upon their pay, and the standard of the qualifications which they are expected to possess goes on constantly rising.

The majority of the Native officers employed in the judicial and revenue Courts, in the Treasuries, Account Department, and Record Offices, in posts below those of the Sarishtadárs or other principal officers of Departments, now receive only from rupees ten to twenty per mensem."

He then went on to describe what those officers were, and stated how little they received :—

"This is true of all the provinces of this Presidency, although the pay is worse in some than in others. Many of these officers, receiving this wretched pittance, hold posts of no little influence and importance, and their duties require for their proper discharge considerable intelligence and education. Their salaries are often little, if at all, higher than the wages given to common labourers and artizans in some parts of the country. According to the statistical returns lately published by the Bengal Board of Revenue, a coolie in Calcutta gets from rupees eight to twelve a month; a blacksmith and bricklayer from rupees ten to twenty, and a carpenter from rupees fifteen to thirty. No doubt these rates are far above the average for the Presidency generally, and they are not quoted as being commonly applicable; but they serve to indicate the enormous increase of prices which has already occurred in some places, and which is fast becoming general."

Mr. Strachey had pointed out above that the salaries of the ministerial officers averaged, in a great many instances, from ten to twenty rupees a month. He then went on to say :—

"The insufficient pay of the higher grades of the establishments attached to our Courts is a still greater evil, because the officers who fill them hold positions of much responsibility and influence, and are constantly liable to great temptation to prefer their private gain to their public duty. It is not too much to say that there are hardly any Native officials employed under our Government whose integrity is a matter of greater importance. Every one who has had any practical experience of the working of our Courts, whether those of the Judges, of the Magistrates, or of the Collectors, knows how much depends upon the character of the Native officers, through whom almost every order has to be issued, and through whose hands the whole business of the Courts must pass. The Sarishtadár, or chief ministerial officer of the principal Courts presided over by European officers, holds a position which, although nominally of inferior responsibility and dignity to those of the Native Judges and Deputy Collectors and Tahsildárs, gives notoriously very often to its holder far greater actual

influence, and offers greater opportunities for irregular and dishonest gains. The difficulty of obtaining men with the necessary qualifications for posts of this kind is rapidly increasing. A knowledge of English is becoming essential in every office of importance, and this fact is alone almost sufficient proof of the necessity of increasing the salaries of this class of public servants.

The Sarishtadárs and other Native officers holding higher appointments in our Courts do not, at present, as a general rule, get half the pay which is given to the higher grades of clerks in the English offices of the Commissioners and Collectors, although the former hold a position of incomparably greater real importance, and although their duties demand incomparably higher qualifications.

There are few measures which would have a greater practical effect towards improving the reputation of our Courts, and increasing their actual efficiency, than measures which would enable us to obtain, for the principal ministerial posts, men in whose knowledge and in whose integrity and zeal we could reasonably place confidence."

The remarks of Mr. Strachey applied to the salaries of the ministerial officers of the Courts of Commissioners of Divisions, District Judges, and so on. Mr. HOBHOUSE need hardly say that they applied equally to the entire Civil Courts of which he was speaking. But he should also like to quote to the Council certain remarks which emanated from the High Court on the subject of increases to the salaries of the Judges of the inferior Courts. Mr. Strachey remarked:—

"The High Court, in their report upon the administration of civil justice for 1864, have strongly urged upon the Government the necessity for improving the position of the uncovenanted Judges of the regular Civil Courts, and have pointed out the disadvantages under which they are placed in comparison with officers in other departments, whose duties are certainly not more important. Thus, in Bengal, there are twenty-five Small Cause Courts. Eleven of the Judges of these Courts receive salaries from rupees 1,000 to rupees 2,000 per mensem; one Judge receives rupees 750; and the remaining thirteen receive rupees 700. In the North-Western Provinces, the salaries of Judges of Small Cause Courts are rupees 1,200 and rupees 800."

He then proceeded to speak of what the salaries were of Deputy Collectors, and showed that their salaries ranged from 700 to 200 rupees a month. After that he went on to say:—

"In Bengal, the establishment of Deputy Collectors is as follows:—

10	Deputy Collectors on			...	...	Rs. 700 per mensem.
15	,,	,,	,,			,, 600 ,,
26	,,	,,	,,			,, 500 ,,
40	,,	,,	,,			,, 400 ,,
48	,,	,,	,,			,, 300 ,,
49	,,	,,	,,			,, 200 ,,
14	Probationers		,,			,, 200 ,,

It will be seen that even the salaries of *Probationers* in the Revenue Department are equal to those of Munsifs of the higher grade. Yet, as the High Court observe in their report, the Munsifs even of the lower grade have been required, not only by an entrance examination, but generally by a B. L. Degree in the Calcutta University, to show themselves qualified for judicial employment, and they have further, by actual work, shown themselves to be officers of promise and deserving of preferment. 'It cannot,' the Court observe, 'be contended that appointments in the more favoured services are more important in respect to their duties and responsibilities than those of the subordinate civil Judges, and the inequality is the more striking when it is found that, in the one department, probationers are placed on the same footing with officers of distinguished merit and at least two or three years' service and experience in the other."

It is proper to notice that very many of the Deputy Collectors are also Deputy Magistrates.

That referred to Munsifs, whose salaries varied from 200 to 100 rupees a month. He further said :—

"The difficulties with which the Court have to contend in making appointments to the judicial service are further increased by the emoluments enjoyed by successful legal practitioners, which naturally deter the more ambitious from becoming candidates for employment in an ill-paid service."

On this same subject Lord Dalhousie some years ago made the following very terse remarks :—

"But there are no demands of greater primary importance than the increase of the salaries of Native Judges; for the longer continuance of the poor pittance to which we have heretofore been compelled to limit them, would convert an avowed imperfection into an open and deserved reproach."

And His Honour the Lieutenant Governor of Bengal, when he was Secretary to the Government of India, made the following remarks with reference to the pay of the Amlah of Courts. He said :—

"The question of giving sufficient allowances to the Amlah is almost more important than that of increasing the pay of the Native Judges.

It is exceedingly doubtful whether these Courts, however high the character of the Judge, can ever gain the full confidence of the people, or be free from corrupt action on the part of the subordinates, until higher allowances are given than those now mentioned. A salary of rupees six to men who must be persons of some education, and who are surrounded by temptation to corrupt practices, is less than that of menial servants. The proposed pay of the Sarishtadár (rupees sixteen) is equally insufficient for the due respect and responsibility attaching to the head officer of the Court, and insufficient to place him above all suspicion of being amenable to corrupt influence. Even this allowance is little more than what many gentlemen in this country pay their kitchen servants."

MR. HOBHOUSE thought that he had shown sufficient reason to the Council why the salaries of the civil Judges and of the ministerial officers he had been speaking of should be increased. Whilst the first scheme of Mr. Strachey, which had reference to the ministerial officers of the Courts of Commissioners of Divisions, District Judges and the like, was still under the consideration of the Local Government, he might mention that the two other schemes for the improvement of the salaries of the officers of the lower Courts and of their ministerial officers had been submitted for the consideration of the Secretary of State, and His Excellency the Viceroy had just informed him that those schemes had received the sanction of the Secretary of State. These three schemes taken together involved an increase of expenditure of something like fifteen lákhs of rupees per annum; and similar schemes, he had been told, would be proposed for the Presidencies of Bombay and Madras, involving an expenditure of about the same amount: so that, altogether, there would be an increased expenditure for the Courts of thirty lákhs of rupees per annum. He had also himself some remarks to make on the Courts. The present salaries of Munsifs ranged from 200 to 100 rupees per month; yet he found that, out of something like 800,000 suits that were instituted throughout the Courts of India, no less than upwards of 700,000 of them were instituted in the Munsifs' Courts, because they were for sums under 300 rupees, which was the limit of the jurisdiction of Munsifs. From the experience he had had, he believed that the officers of the Courts of which he had been speaking were of a much higher character than they formerly were, and he believed that they were becoming every day of a higher character. He regretted that he could not speak so favourably of the ministerial officers of these Courts, because there was no doubt that much peculation was practised by them, and he believed that nothing could go on in these Courts without the giving of fees and *douceurs*. But nothing could be done in the way of improvement with regard to those officers while they were badly paid. He had said that an increased expenditure of thirty lákhs of rupees must be incurred. With this view His Excellency the Viceroy in Council had appointed a Committee for the purpose of enquiring into the present condition of the stamp-law. The Committee was appointed with this object. It was, if possible, to derive out of the stamp-duties levied on judicial proceedings a sufficient revenue not only to meet the increased expenditure to be incurred for the Courts, but also to make the Courts, to a more considerable extent than they did, pay for themselves. The Commission consisted of the Hon'ble Mr. Justice Louis Jackson as referee, and of Mr. Cockerell and himself as working members, and subsequently of Mr. Prinsep and himself. They had called for information from all parts of India, by issuing questions in a

circular to selected officers throughout India. They had also called for returns of a very voluminous nature, and collected what information they could from the returns available in Calcutta. Before he said any thing more with reference to the scheme which the Stamp Commission submitted, and which had been accepted by the Executive Council almost in its entirety, he wished to say something on the subject of levying stamp-duties on judicial proceedings generally.

He was aware that there was an opinion among certain writers in England that justice should not be taxed, but as far as he knew, that theory did not meet with entire approbation in England; for he found that, according to the returns of the year 1862-63, in the County Courts, the amount of fees averaged something like fifteen or sixteen per cent. of the value of the property litigated: he feared, therefore, that the theory could hardly answer even at home. But he was sure that it could not be applied to this country. The community of this country was so particularly litigious, that litigation was, with the great majority of the people, something like what an engrossing pastime, such as the ring, was to some persons at home, and they would pay whatever amount was demanded rather than not litigate. On looking into the history of the levy of duties on the institution of suits, he found that they had always been levied with the object of repressing the amount of petty and vexatious litigation with which the Courts would otherwise have been flooded. He found, about the year 1795, up to which time no duties were levied, the state of things thus described in (Bengal) Regulation XXXVIII of that year:—

"Many groundless and litigious suits and complaints have been instituted against individuals, and the trials of others have been protracted by the filing of superfluous exhibits, or the summoning witnesses whose testimony was not necessary to the development of the merits of the case. The business in many of the Courts of judicature has in consequence increased, so as to prevent the Judges determining the causes and complaints filed with that expedition which is essential for deterring individuals from instituting vexatious claims, or refusing to satisfy just demands."

And the consequence of this was that a fee was imposed on the institution of all suits in the Civil Courts. That Regulation extended, in the first instance, only to the province of Lower Bengal, but was subsequently extended to Benares; and then, only two years after the Regulation had been passed, another Regulation was enacted, increasing the amount of these duties on the same grounds. Thereafter, in 1803, fees were levied all over the country. These fees were afterwards merged into stamp-duties, and these duties had been levied throughout the country ever since, at very nearly the same rates as

those now obtaining. Now he found from returns made, that there were something like from sixty to seventy thousand suits instituted throughout the country, for sums averaging about two rupees twelve annas. It seemed to him that, if people would quarrel about such petty matters, they should not be allowed to use the agency of the Courts at a trifling expense, but be made to pay heavily for it. However that might be, he thought that stamp-duties should be levied, not only to check petty and vexatious litigation, but in some degree with a view to support the Courts.

He would now proceed to consider some of the propositions that had been made by the Stamp Commissioners. The first had reference to the scale of stamp-duties for the institution of suits. In that scale, the Hon'ble Mr. Roberts calculated that a very large percentage was levied on suits of the lower value, and a comparatively very small percentage on suits of the higher value. MR. HOBHOUSE'S own idea was that percentage was not the proper principle on which to consider how these duties should be levied. We should consider what the machinery was that was brought into action by the person who set the Courts in motion, and then what he should pay for it. He would take the case of, first, suits of low value in the Courts of Munsifs. In such cases, the machinery of those Courts was first brought into operation; then there was an appeal to the District Judge, who again might refer the case for the opinion of the High Court. Therefore, in suits of the very smallest value, the machinery of two Courts, and possibly of three, might be brought into operation. What was the case when you took a suit of the higher value? Very much the same. If you took a suit for 10,000 rupees, that suit was tried first in the Court of the Principal Sadr Amín, and then it would go to the High Court, and possibly to the Privy Council in England. But if the suit were for less than 10,000 rupees, it could not be taken to the Privy Council. Therefore, it seemed to him that the way to ascertain the stamp-duty on the institution of a suit was, not to calculate the percentage, but to fix the stamp-duty according to the machinery the suit would bring into operation. The first question that suggested itself to the Stamp Committee was whether there should be any reduction of stamp-duty on suits of small value. Their unanimous opinion was that there should not be any such reduction. It was not thought desirable that persons should be encouraged to bring their quarrels into Court on every trifling matter, and, moreover, it was the unanimous opinion of the Committee, and of almost every person whom the Committee had consulted, that, if there was any reduction, the consequence would be that the Courts would be overwhelmed with the number of petty

suits that would be instituted, and it was actually found that even an institution-fee of twelve per cent., which was about the amount of stamp-duty *plus* the service fees levied in the Panjáb, did not prevent litigation of this sort being brought into the Courts, but that, on the contrary, this litigation was on the increase. The Committee therefore resolved that no suits should be instituted on a duty less than one rupee.

The next question was, from what sum you should begin to raise the duty, and what the duty should be. It was quite clear that the present scale of stamp-duty was founded on no sort of principle. He found, on looking over that scale and certain tables prepared by the Financial Department, that there was this result: that in suits of ten rupees, the duty was at the rate of ten per cent: in suits of fifteen rupees, it was over six per cent: in suits of sixty-five rupees in value, it was twelve per cent: in suits of sixty rupees, only a little over six per cent: and so on, jumping backwards and forwards, without any sort of principle, all through the scale. What suggested itself to the Committee was this. They had before them the fact that, in suits in the Small Cause Courts in the Presidency towns, an institution-fee of two annas on the rupee, or something over twelve per cent., was that levied in all the Presidency towns at present, up to 1,000 rupees in value. It did not seem to the Commission that exactly that amount of duty should be levied in suits in the Mofussil, because the agency in the Presidency towns was much more expensive and also much better, and therefore, to make Mofussil suitors pay the same duty as suitors in the town, did not seem fair. But something very little less than twelve per cent. was actually rendered necessary by the present scale. The Committee therefore recommended that, in suits up to 1,000 rupees, a uniform duty of ten per cent. should be taken, and in suits above, something gradually less and less. So as that, in a suit of six lákhs of rupees, for instance, the duty should be about half per cent., and in no suit would the duty be more than ten per cent. Another point had to be considered. In referring to the present scale, it would be found that the rate of stamp-duty jumped most arbitrarily, and in a way most inequitable to the suitor; suits of 801 rupees, for instance, paying as much as suits of 1,600 rupees; and suits of 50,001 rupees, as much as suits of 1,00,000. This was inequitable, and had a very bad effect. If a person sued another for mesne profits, and the mesne profits exceeded 50,000 rupees, he found it quite as easy to put down the mesne profits at a lákh of rupees, as to put them down at what they really were; and this not only gave a great deal of trouble to the Court in execution of decree, in order to

discover what the mesne profits were, but it also tended to injury in a moral point of view. To sum up, then, what the Committee proposed was, that no suit should come into Court on a lower stamp-duty than one rupee; that up to 1,000 rupees, the duty should be at the rate of ten per cent.; that above that sum, the duty should gradually decrease; that from ten rupees to one hundred rupees, it should jump only by five rupees at a time; that in suits from one hundred rupees to one thousand rupees, it should jump only by ten rupees at a time, and that in suits above one thousand rupees, it should jump only by a hundred rupees at a time. That the values should jump somewhat seemed necessary for the purposes of the Stamp Office, as otherwise it would be very difficult for that office to fulfil the requirements of the law. He should mention that, by the increase of duty which the Stamp Committee proposed, there would probably be a gain of about twenty-seven lákhs of rupees, more or less. The increase could not be very accurately estimated, as the figures before them were not very correct.

The next subject to which he would call attention was the valuation, in order to the assessment of stamp-duty, in suits for land paying revenue to Government. Where the land was permanently settled, as in Bengal, the principle was this:—You found the assessment annually taken by Government, you multiplied that by three, and the product was supposed to be the value of the land in suit. Where lands were temporarily settled in Bengal, or where the lands were situated in Madras or Bombay, there you found the sum annually paid to Government, and took it as the actual value of the land. But, in fact, that was not the actual value of the land. In order to arrive at that actual value, the legislature took what was the average in the year 1829, of land put up for sale for arrears of revenue, and assessed the stamp-duty accordingly. But the average of sales in 1829 was no longer that average, and when in subsequent years the Stamp Act was amended, the legislature entirely overlooked this provision of the law, or otherwise it must have seen that landholders were placed in a much more favourable position than any other kind of suitors. The Stamp Committee called for returns on the subject of these suits, and they found that, taking the average of sales for arrears of revenue, it showed that, in Bengal, land fetched between eight and ten times the amount of the Government assessment, and that the same or nearly the same was the case in Bombay and Madras; that in the Panjáb, land fetched about six times the value; and that when lands of the same description were sold by private sale, the value immediately doubled, and became twelve times the annual assessment. It seemed, therefore, that the

market-value of land paying revenue to Government was between eight and ten times the amount of the yearly assessment. Properly speaking, the market-value should be the value on which the stamp-duty should be levied; but if you were to say that the market-value should, without some other provision, be the value for the purposes of assessing stamp-duty, you would not arrive at that value without putting suitors to much trouble and delay. No doubt the present system was a very inaccurate one. He believed the Hon'ble Mr. Taylor would, from his knowledge and experience of the subject, be able to bear him out in the assertion, that what were called Inám lands at Madras were, when resumed, assessed at about one-eighth of the sum at which ordinary land was assessed. When those lands were made the subject of suits, what was it that they paid in the shape of stamp-revenue? You took the profits of the Inámdár; you multiplied these by eighteen, and on the product was calculated the amount of the stamp-duty. But the moment those lands were resumed, that duty fell almost to a minimum. Supposing that the annual profits of a rent-free holder were one thousand rupees, then, in order to ascertain the stamp-duty, you would multiply that sum by eighteen, and the stamp-duty would be calculated on that sum, and would be five hundred rupees. But suppose that that land was resumed, and that on resumption three hundred rupees was the sum payable as Government assessment on that land; from that moment, supposing the land were in suit, the value assumed was three hundred rupees, and the stamp fell to sixteen rupees, and it followed from the mode in which the value of revenue-paying land in suit was arrived at, in order to the assessment of the stamp-duty thereon, that where land was lightly assessed, it paid a light stamp-duty; and that where the assessment was heavy, the duty was proportionately heavy also. That principle of assessment for purposes of stamp-duty was, when it was remembered in what an arbitrary manner the assessment had in early times been put on, most inequitable; and the only fair principle of assessment, and that therefore which the Stamp Committee proposed to lay down as a principle, was that lands should be assessed for stamp-duty at their market-value. But still, in order to arrive at that value, some standard must for convenience of suitors be laid down, and the only satisfactory way out of the difficulty that the Commission could hit upon, was to provide that eight or ten times the amount of the revenue paid to Government should be taken to be the market-value of the land in suit, until the contrary were proved. If the lands in suit were permanently settled, then eight times the annual assessment would be taken to be the market-value of them; if temporarily settled, then ten times the assessment would be so taken in the first instance; but if the actual value of the land were less,

then it would lie on the person suing to prove that it was less, and he would get a remission of stamp-revenue. That seemed to him to be the only way to get out of the difficulty. He should mention that there was a difference between land temporarily settled and land permanently settled, the former being, for obvious reasons, more valuable in the market.

The next point which he would mention had reference to an exemption under Article 10 of Schedule B of the present stamp-law. That exemption embraced all complaints before the criminal Courts, and exempted them entirely from stamp-duty. He thought it would be a very dangerous matter if no duties at all were levied for the institution of civil suits, and he could now prove that since the time when stamp-duties had ceased to be levied on complaints before the criminal Courts, the most dangerous results followed. Those duties were levied originally in the year 1797. It was then found that there were no means of checking litigious complaints in trifling matters before the Magistrate, and therefore a fee of eight annas was directed to be paid on all complaints of a petty nature before the Magistrate; but subsequently it was found that such complaints were brought, not only before the Magistrates, but before Daroghas, Kotwáls, and other head officers of Police. Therefore, subsequently, the same stamp-duty was also levied on all complaints of such nature before such officers of Police. But it was found also that those vexatious complaints were not confined to petty offences, but that they included some of a heinous nature, such as adultery, rape, and the like. On these, a fee of one rupee was levied. That was the state of the law up to the year 1829. In that year an alteration was made: the stamp-law was amended, and a duty of eight annas was imposed on the institution of all complaints of offences of a bailable nature—offences as well of a heinous, as of a trivial character. That was the law up to 1860. In that year it was proposed by the Hon'ble Mr. Harington, who introduced the Stamp Bill, to extend the provisions of the law of 1829 to the Presidencies of Bombay and Madras; but some opposition was raised by the Members for those Presidencies, and Sir Barnes Peacock and other members of the Council objected generally to any stamps being taken at all on judicial proceedings. No detailed discussion followed, as far as he could discover from the published proceedings of the Council, yet it appeared that the provision of the law of which he was speaking was altogether done away with, and in its place there was the provision which exempted all complaints before the Magistrate from any sort of duty. He would now endeavour to show the results of that alteration of the law. Shortly after the stamp law of 1860

was passed, there was another alteration of the law, namely, a provision in the Code of Criminal Procedure, which very much affected these complaints in the criminal Courts. Up to that time, not only had there been a stamp-duty of eight annas on all complaints before the Magistrate, but certain fees were levied on the issue of the summons on the defendant and on the witnesses of the complainant. Those fees and stamp-duties taken together were, no doubt, a very severe tax on complainants. But by the laws of 1860 and 1861, they were entirely done away with: a person who wished to make a complaint before a Magistrate could do so on no petition at all, or on a petition on plain paper. The present procedure then was this. The Magistrate summoned the defendant at the expense of the State, and either told the complainant to bring his witnesses with him, or, if the complainant wished it, summoned the witnesses also at the expense of the State, and something like this state of things seemed to him to follow on that state of the law. If a person had an enmity against his neighbour, he went to some wretched Mukhtár plying his trade outside the Court House. This Mukhtár for a few annas drew up a complaint of probably some trifling, but it might be of some heinous offence: the Magistrate examined the complainant, and if a *primâ facie* case was made out,—and every body knew that it was not very difficult to do this—the Magistrate fixed a day on which the complainant and his witnesses should be present, and summoned the defendant and his witnesses. The defendant and his witnesses came in on the day appointed, and, as a rule, the complainant was *non inventus;* he had done all that he wished to do; he had dragged the defendant from his field, and put him to expense; and then had never appeared at all. There were, it was true, certain ways in which persons making such false and vexatious complaints might be punished, but it was very difficult, and in some instances dangerous, to do so. The complainant might either be charged with making a false complaint and punished summarily by fine, or he might be charged with an offence which amounted to perjury, and committed to the Sessions for trial. But the Courts had found great difficulty in convicting such persons under the Penal Code, and were very averse to put those provisions into force; and although the lower Courts had had their attention repeatedly called to those provisions, they could not be induced to act on them, owing to the very great difficulty experienced in procuring convictions. He believed that His Honour the Lieutenant Governor could bear him out on that point.

He would now show, from certain returns which he had himself collated from the reports in the Bengal office, what extraordinary results had followed the procedure by which complaints before the criminal Courts were made duty-

free. That procedure first came into force in 1861. In that year, there were 34,000 complaints of a petty nature: in the next year the number rose to 44,000: in the next to 58,000, and so on. Out of the Police returns he had gathered much more important data. He took at hap-hazard some of those offences which, from his own experience, he believed to be those in which the majority of petty, vexatious or false complaints were instituted. He took the offences of contempt of the lawful authority of public servants, offences against religion, criminal trespass, cheating, simple mischief, criminal breach of trust, defamation, criminal intimidation, simple hurt, wrongful confinement and wrongful restraint. These seemed to be the cases in which he was likely to find petty and false complaints; and the result was that his anticipations were fully justified. In 1863, there were 167,000 persons charged with those offences in Lower Bengal; of these 95,000 were never brought to trial at all, and of the rest more than one-third were acquitted, and in 1864 the results were still more disastrous and decisive. In that year, some 177,000 persons were charged with these offences; of these 105,000 were never brought to trial at all, and of those brought to trial, more than half were acquitted. From these results it seemed that some check other than that provided by the present law must be put on complaints of that nature. And he would extend a provision of the law to which he would presently refer also to the Presidencies of Bombay and Madras. In Madras, according to the returns of 1863-64, which were the only returns to which he had had access, he found, taking up the returns hap-hazard, and picking out of them the offences he had above mentioned, that something like 90,000 persons were charged with offences of a similar nature to those which he had taken as his guide with reference to Bengal, and of those very nearly two-thirds were acquitted. He believed the Hon'ble Mr. Taylor would support him in his assertion, that some better provision of the law on this point was as much wanted in Madras as in Bengal. Of Bombay he could not speak with the same confidence. All he could find was, that the percentage of acquittals to convictions was something like thirty-seven per cent. In Madras it was thirty-four per cent., and when he found that, in that Presidency this percentage was made up so largely of petty offences, he thought that the thirty-seven per cent. in Bombay would be found to be made up in the same manner. For these reasons he thought that, if persons would come into Court for every petty matter, it was no hardship to make them pay to a certain extent for the machinery which they put in motion for the trial of their complaints. There were two sorts of expenses which should be paid by complainants; first, the institution-stamp, and then the service of summons on the defendant. The institution-stamp was eight annas; the summons

he would represent by an equal sum of eight annas, and he would insist that every person coming into Court, who came before the Magistrate, should institute his complaint on a stamp of one rupee. But he would at the same time provide a safeguard. Under the present law, Section 44 of the Code of Criminal Procedure, whatever a man's expenditure was in prosecuting a just complaint, he could be reimbursed by a fine imposed on the defendant. As a matter of fact, some seventy-five per cent. of fines imposed were realised; therefore, in all probability, a fine imposed to reimburse a complainant would be realised. If a complaint seemed a just complaint, and if the Magistrate should think that it was not of a petty or vexatious nature, or if, for any other reason, he should think that the complainant's expenses should be repaid, he might reimburse them under Section 44 of the Criminal Procedure Code, by a fine on the person convicted. There might, however, be some persons who, from extreme poverty, might be unable to pay even so small a sum as one rupee for the institution of what might be a very true complaint. He would therefore put another provision in the Bill, a provision giving the Magistrate a discretionary power to remit the stamp-duty for good reasons. With these safeguards, he hoped there would be no objection to re-impose the stamp-duty on complaints before Magistrates, and to raise it from eight annas to one rupee. The financial result would, he believed, show an increase of stamp-revenue of about five lâkhs of rupees.

The last point to which he should call the attention of the Council, was the provision of note *g* to Article 11 of Schedule B of the present stamp law. By the provision of that note, when any person sued in a revenue Court constituted under Act X of 1859, for arrears of rent or for money in the hands of an agent, he was privileged to sue on a stamp of one-fourth the value of the stamp-duty which could be levied in an ordinary Civil Court; and under another provision, in Courts so constituted, suitors for any matter other than the above could sue on a uniform stamp-duty of eight annas. He was afraid he must take up some time in explaining how it was that that provision came to be found in Act X of 1862. As far as he could make out of what had happened in former years, this appeared to be the history of the levy of stamps on suits in the revenue Courts. At first no stamps were levied at all; then certain Courts were constituted under Regulation VII of 1799 for the trial of suits for arrears of rent of the current year, and for the recovery, on the part of ryots, of damages for illegal distraint. If a person were to sue in those Courts for arrears of revenue or the recovery of damages for distraint, he sued on a stamp of eight annas. This law obtained till

1831. In that year a different rule was established. If a person sued for arrears or damages, either, in the first instance, in the Revenue or in the Civil Court, he sued on a stamp-duty of one-fourth the ordinary duty. But if he sued, in the first instance, in the Revenue Courts, and then sued in the Civil Courts to set aside the decision of the Revenue Court, he had to pay, not only the one-fourth duty in the Revenue Court, but also the full duty in the Civil Court. The reason of that law was, to induce persons who had a dispute in the matter of rent to come for a speedy decision to one Court or the other. If they chose to protract their litigation, they had to pay one-fourth the ordinary stamp-duty, *plus* the whole duty: but if they chose the one or the other, they then had to pay only the one-fourth duty. The law of 1831 was continued up to 1859. In that year Act X of 1859 was introduced, and it was on the introduction of that Act that this note *g* in the stamp-law was made to appear very much in the form it now obtained. As far as he could make out, there was no very great discussion on the point, but Mr. Cowie insisted that the ryots and zamíndárs should have that privilege. On the other hand, Sir Barnes Peacock, and those who thought with him, insisted that the privilege should not be conceded, and after some little debate the law was carried. Mr. Hobhouse would call attention to a provision in Act X of 1859, which made the provision of which he had been speaking one of very great importance. He had remarked before, that the privilege up to the year 1831 was only given to two classes of suitors; to suitors for arrears of rent of the current year only, and for damages on account of distress. But when Act X of 1859 was introduced, those two were not the only classes of suitors who were privileged; there were then created no less than twenty-seven or twenty-eight classes of suitors to be so privileged. He would read to the Council what suits were now cognizable in the Revenue Courts. They were—

"Suits for the delivery of pattás or kabúliyats, or for the determination of the rates of rent at which such pattás or kabúliyats are to be delivered; all suits for damages on account of the illegal exaction of rent or of any unauthorized cess or impost, or on account of the refusal of receipts for rent paid, or on account of the extortion of rent by confinement or other duress; complaints of excessive demand of rent, and all claims to abatement of rent; suits for arrears of rent due on account of land either khiráji or lákhiráj, or on account of any rights of pasturage, forest-rights, fisheries, or the like; suits to eject any ryot or to cancel any lease on account of the non-payment of arrears of rent, or on account of a breach of the conditions of any contract by which a ryot may be liable to ejectment or a lease may be liable to be cancelled; suits to recover the occupancy or possession of any land, farm, or tenure, from which a ryot, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same; suits arising out of the exercise of the power of distraint conferred on zamíndárs and others by

Sections CXII and CXIV of this Act, or out of any acts done under color of the exercise of the said power as hereinafter particularly provided."

So that, in fact, something like twenty-seven classes of suitors, who had never been privileged before, were by this law privileged. But they were not only privileged in the matter of stamp-revenue, but also as to the Courts; for by the Act of 1859, suitors who sued on one-fourth stamp-duty could only be taken into one Court once for all. The provision of the old law was therefore not only considerably extended, but the parties were confined to one Court only.

He should here state that the note *g* to Schedule B, which was now the law, continued to be the law in Act X of 1859 only up to the passing of Act XXXVI of 1860. In that year, Mr. Harington introduced a Bill to amend the stamp-law, and moved the insertion of this provision in note *g* into the stamp-law, or into a more appropriate place, and then again Sir Barnes Peacock opposed the Section, and opposed it successfully; and consequently, during the whole of the year 1861, and in a part of the years 1860 and 1862, suitors under Act X of 1859 had no sort of privilege *quoad* stamp-duties. The only reason for which any sort of privilege had ever been given was said to be this. People said that the payment of revenue depended upon the payment of rents, and that, inasmuch as the State required a person to pay his revenue punctually, practically therefore you should oblige his tenants to pay their rent punctually. If that were the case—if revenue depended so directly on rent—then there must be some way to enable landlords to recover their rents cheaply and expeditiously. But, as a matter of fact, the payment of revenue did not directly depend on the payment of rent, as he thought he should be able very conclusively to show. The payment of revenue no more depended on the payment of rent, than the payment of any other tax did, as far as his experience and the information before him went. Now, if revenue did depend upon rent, then, at any time when rents were not very cheerfully and punctually paid, you would expect to find that revenue was not regularly paid, and that consequently sales of land for arrears of revenue would be numerous. He had taken the returns of the Board of Revenue from 1861 to 1864; and he found that, in 1861-62, there were no more sales for arrears than afterwards, but, if any thing, less. If it was necessary to give certain zamíndárs a privilege in suing which others had not, then you would find that, in that year, when they were not so privileged, there would be a reduction in the number of suits. But it was not so. On the contrary, he found that, in 1861-62, there was a very large and manifest increase in the number

of suits. Of course he was aware that something was due to very exceptional circumstances in the year 1860-61. The limitation clauses of Act X were drawing to a close, and there were besides certain well-remembered disturbances between landlords and tenants. But taking those exceptional circumstances into account, and deducting the figures referring to the particular districts in which the disturbances occurred, still he found that, in 1861, there was a very large increase in the number of suits instituted under Act X of 1859. This led to the conclusion, that considerations of stamp-duty had nothing to do with the increase in the number of suits in the revenue Courts constituted under Act X of 1859, and, on the contrary, he had evidence that the stamp-duty levied under that Act was thought so light, that the Act seemed to have been used for purposes of registration only. Suitors who came into Court should always do so *bonâ fide*: they should actually be suing for something essential; there should be some point really in dispute between the parties. But if, in the majority of suits, there was no point in dispute, you must look to other causes for the establishment of those suits. Looking into the returns of Lower Bengal, he found the following facts. He found that, in no less than sixty-three per cent. of the suits on which decree passed in the revenue Courts, there was no dispute at all, but judgment was at once confessed; and in the execution of decrees, there was no dispute at all in seventy-five per cent. of the cases: people confessed judgment at once, and paid as soon as the decrees were put into execution. He took the reason of such a state of things to be this. There was no sort of dispute at all between the parties, but the agents who stood between the zamíndár and the ryots were not believed or trusted in any way by the latter. The ryots, therefore, would not take receipts for rent from those agents, fearing that the agents would pocket the money and conceal the receipts, and that they would have to pay their rents over again. But if the ryots were taken into Court, they knew they would get secure receipts for their rents. The large majority of the ryots preferred, therefore, to keep their money in their pockets until they could pay through the agency of the Courts. Another cause for what appeared to be an unnecessary recourse to the Courts on the part of landlord and tenant might, in the case of substantial ryots, be found in facts of which he had some experience as Collector of Burdwan, as His Highness the Mahárájá would probably be able to inform the Council. On the Mahárájá's estates, there were certain persons called patnídárs, who were his tenants, and there was a special law for compelling them to pay their rents every half-year. In the majority of instances, those patnídárs did not pay their rents. Mr. Hobhouse found that nearly every half-year he had to put up for sale no less than eight hundred patní tenures, but when brought to the hammer, the arrears were generally

settled, or, in the few cases which were not so settled, the non-settlement was specially accounted for. He then enquired into the meaning of such proceedings, and found, to the best of the explanation given to him, that the patnídárs were in the habit of lending out their money at about thirty per cent., whilst the costs which they paid under the Regulation, in default of punctual payment, did not amount to more than twelve per cent. It was clearly therefore for their interest to delay payment as long as possible, and therefore they never did pay except under the extremest pressure of the Courts, short of actual sale of their tenures. It seemed to him possible, that what was the case with the Mahárájá's patnídárs might be the case with many of the more substantial ryots, some of whom hold whole villages; they might also lend out their money similarly, and never pay until the Courts were brought to bear upon them. It therefore seemed to him very mischievous that resort to Courts should be so cheaply obtained. He had been speaking principally about Bengal from his own knowledge; but he would now read a letter from Mr. Thornhill, senior member of the Board of Revenue of the North-Western Provinces, on the subject. He said:—

"I do not see any valid ground for maintaining the distinction between Revenue and Civil suits, and would abolish the privilege.

It is to be supposed that the landlord cannot pay his revenue unless he possesses exceptional facilities for realizing his rents. I would reply that, if with the power of distraint on crops which the law gives him, he cannot pay up his revenue without preliminary suits, he will soon be a hopeless defaulter.

The time for such exceptional privileges, with the view of facilitating the collection of land revenue, has passed away in these Provinces, and when it is remembered that nearly four millions sterling are collected in the North-Western Provinces, with about three cases of sale, and five or six of farm or transfer, and a real balance of one and half per cent., there is evidently no necessity for any exceptional legislation.

The agriculturists are all well off. The rent and revenue are both paid easily, and where recourse is had to the Revenue Courts, it is under circumstances which, in my opinion, render special indulgence quite unnecessary.

The ryots up here stand no oppression, and the difference between full and quarter institution-stamps would never interfere with their opposition to what they considered an unjust claim on the part of the landlord to get more than his dues.

The high prices which have prevailed up here for some years past have put immense sums of money into the pockets of the cultivators.

The rents being almost always paid in money, the rise in prices benefits the cultivator much more than the landlord, and I think that Mr. Muir would not now consider the maintenance of the privilege to be advisable."

Mr. Thornhill here referred to what Mr. Muir had stated to him (MR. HOBHOUSE) in the way of conversation: Mr. Thornhill then went on:—

"In looking over the annual statistics, I find that the Ábkárí fluctuates with the season. With a plentiful crop there is a great consumption of spirits; with a bad crop the consumption falls off. But the stamp-revenue is not so affected, and during the past year, when there was considerable scarcity in the Benares province at one time, the people could forego the luxury of dram drinking, but they could not give up their lawsuits. So the Ábkárí fell off and the stamp-revenue was not affected.

I think that this alone is a proof that there is no necessity for affording any exceptional inducement to bring any class of suits under adjudication."

That was what Mr. Thornhill said of the North-West Provinces. MR. HOBHOUSE had also made enquiries as to what was the rule in Bombay and Madras, and the Panjáb. In the Panjáb he found that, although there was in some places a rule by which suits for arrears of rent of the current year might be instituted on a stamp-duty of but eight annas, yet that was not the law, nor was it the practice, in all parts of the province, and in some parts the full stamp-duty was levied. He believed the Hon'ble Mr. Brandreth would confirm this statement, and would also agree with him that there should be no privilege in the matter of the stamp-duty charged to suitors of the classes described in Act X of 1859.

In Bombay and Madras there was a different state of things. In those Presidencies, to the best of his information—but he spoke with diffidence—there was no such thing as a suit for arrears of revenue in any Revenue Courts proper. When the tenant was in arrears, the landlord distrained the crop, and if the tenant was dissatisfied, he made a complaint to the Collector, and the Collector adjudicated the dispute between the parties; that, he thought, was the case in Madras, and also, he believed, in Bombay. But whenever a person was in arrears of rent other than those of the current year, there was no remedy but to go into the Civil Court and pay the full stamp-duty. He would note also that, under Act X of 1859, the zamíndár had almost the same power of distraint as under the Madras Act. It seemed, therefore, that that which was given was a privilege to the zamíndárs of Bengal, the North-West Provinces and Oudh alone, but was not given to zamíndárs in other parts of the empire. If, therefore, no good reason could be shown why suitors under Act X of 1859 should be privileged to a greater extent than others, he thought the fact that they were not privileged in any places except Bengal, the North-Western Provinces and Oudh was a further reason why the privilege should not be continued. He would also mention one fact as showing the falsity of the argument that, because

revenue was dependent upon rents, therefore zamíndárs should be privileged. If the privilege were confined to suits for arrears of the current year, he could understand the principle upon which the privilege was given; but when you came to sue for three years' arrears, how could it be possibly said that there was any dependence, in that case, of revenue on rent? and how was there any such dependence in suits on the part of a ryot for possession merely, or for ejectment, and the like?

He would now show how unequally the special stamp provision of the Act of 1859 told, as compared with the general provisions of the Stamp Act; how unfair it was. He would take the case of a man who sued for arrears of rent, and of one who sued on a bond. With regard to the former, the tenure itself was hypothecated for the rent, and he could at once go on that tenure for the rent due. But in the case of a man who sued on a bond, when he got his decree, he had nothing to depend on but any immoveable or moveable property he could find belonging to the defendant, and the zamíndár had always a prior claim on the standing crops, which he could distrain for rent. What was looked for in a decree was, that there should be some security for its execution. Take the case of a tenant dispossessed by the landlord: if he wished to obtain possession, he came into the Revenue Courts, and sued on a stamp of eight annas. You must presume the suit to be true, and the decree to be given against the landlord, and the wealth and property of such landlord was ample security to the tenant for whatever he had expended in his suit. But a ryot dispossessed by a fellow ryot had no such security, and yet he was bound to go into the Civil Court, and the stamp-duty he had to pay must always be as much as one rupee, and might be very much more; yet, in the other case, the duty was never more than eight annas. There were many other ways of showing how great and unnecessary a privilege Act X of 1859 gave to suitors under that Act, who were not privileged under the law generally, but he thought he had already sufficiently shown how inequitably the Act worked.

He would now shortly sum up the recommendations of the Stamp Committee. He found that the total amount expended on the Courts of Justice throughout the Empire came to about the sum of two crores and twenty-five lákhs. To that must be added the thirty lákhs which, as he had said before, it was proposed and partly sanctioned to expend in the improvement of the Courts, amounting altogether to two crores and fifty-five lákhs. The income at this moment derived from stamp-duties was about fifty lákhs, the increase on which, according to the scheme of the Stamp Committee, was about sixty-five lákhs. The increase they hoped to derive by the increase in the scale for the institution

of suits, was twenty-seven lákhs: on suits for land, thirty lákhs: on suits under Act X of 1859, three lákhs; and on criminal complaints, five lákhs. When it was considered that the whole amount expended on the Courts was two crores and fifty-five lákhs, and that it was only proposed now to provide for about one crore and fifteen lákhs, he did not think it was unreasonable to expect suitors to pay that proportion of the expenditure of the Courts.

The Hon'ble MR. COWIE wished to ask a question. The Hon'ble Mr. Hobhouse had spoken in a very clear and comprehensive manner of the amendments in the stamp-law which he proposed, but MR. COWIE understood that the Bill would be confined to only one portion of the stamp-law, namely, that by which stamps on judicial proceedings were regulated. He had been on a former Committee on the stamp-laws, and he was quite free to admit that Schedule A was open to much improvement. He wished, therefore, to know if the proposed Bill would be confined to the amendment of Schedule B, or whether it was intended by it to amend the whole stamp-law. He thought that the opportunity should be taken to revise the whole law on the subject.

The Hon'ble MR. HOBHOUSE was quite prepared to answer the question. He had intended to state that the present amendment of the law was only meant to be a partial amendment. He understood that it was in contemplation to amend the whole law, and next year a measure would be introduced for the amendment of Schedule A. He might also mention that, with the permission of the Council, he would in the present Bill modify a clause in Schedule A which he understood very much required alteration, namely, the article under which stamp-duty was charged on instruments appointing proxies for shareholders in Joint Stock Companies.

The Motion was put and agreed to.

PORT DUES (MOULMEIN AND BASSEIN) BILL.

The Hon'ble MR. GREY presented the Report of the Select Committee on the Bill for the levy of enhanced Port-dues in the Ports of Moulmein and Bassein, and to provide for the establishment and maintenance of Coast Lights in the eastern part of the Bay of Bengal.

PRESIDENCY JAILS BILL.

The Hon'ble MR. MAINE asked leave to postpone the presentation of the Report of the Select Committee on the Bill to amend the law relating to the

custody of prisoners within the local limits of the original jurisdiction of the High Courts at the Presidency Towns. He said that he was in communication with the Hon'ble Sir Barnes Peacock on the subject of the Bill, and proposed to request the Select Committee to sit again.

Leave was granted.

The Council adjourned till the 22nd February 1867.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 15th February 1867.

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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 22nd February, 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Honour the Lieutenant-Governor of Bengal, K. C. S. I.
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Hon'ble Colonel Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble H. B. Riddell.
The Hon'ble E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble C. P. Hobhouse.
The Hon'ble J. Skinner.
The Hon'ble D. Cowie.

MURDEROUS OUTRAGES (PANJÁB) BILL.

The Hon'ble MR. BRANDRETH moved that the Report of the Select Committee on the Bill for the suppression of murderous outrages in certain districts of the Panjáb, be taken into consideration. He said that the principal amendments which the Select Committee had made in the Bill were contained in sections 6 and 13. Section 6, which directed the appointment of assessors, had been amended in accordance with the suggestion made by His Excellency the Viceroy on the occasion of the introduction of the Bill, *viz.*, that it should not have the appearance of restricting the appointment of Europeans, whether civil or military. It was now proposed that the Commissioner should appoint such persons as he might think fit to act as assessors. Section 13, which related to the jurisdiction under the Bill, enabled the Commissioner to confer that jurisdiction on any person having the full powers of a Magistrate, in any case in which the Commissioner himself should not

unable to conduct the trial; and that amendment had been made in accordance with suggestions made in communications received on the subject of the Bill, that the section should distinctly intimate that the authority of the Commissioner to invest Magistrates with jurisdiction under the Act should be conveyed subsequently to the commission of the outrage, and not previously. It was therefore proposed that the jurisdiction might be exercised by any Magistrate with full powers whom the Commissioner or the Lieutenant-Governor might specially invest with jurisdiction to try an offender. That jurisdiction, if it ever was to be delegated, ought to be delegated within two or three days of the commission of the outrage; and such delay, if it helped to secure the nomination of the most competent Magistrate, would not prove unnecessary. The other amendments made by the Select Committee were of a verbal character, or of an explanatory nature, for the purpose of making the Bill more clear where it was not sufficiently so as originally introduced.

His Honour the Lieutenant-Governor, the Hon'ble Mr. Maine, and the Hon'ble Mr. Shaw Stewart had given notice of some further amendments which they intended to move. MR. BRANDRETH would, however, observe that his friend the Hon'ble Mr. Maine had previously signed the Report of the Select Committee on the Bill, which recommended that the Bill, as amended, should be passed. There seemed, therefore, some little inconsistency in his taking objections to the Bill after signing that Report. But as MR. BRANDRETH was anxious to hear the grounds on which his Hon'ble friend's amendment was based, he did not propose to press that point as an objection to the amendment. The amendments of which notice had been given would, he concluded, be read out and explained. But he would suggest that His Honour the Lieutenant-Governor's amendment should be the first to be considered, because, if carried, there would hardly be room for the Hon'ble Mr. Maine's amendment; and the Hon'ble Mr. Shaw Stewart would in that case have materially to alter the amendment suggested by him.

He (MR. BRANDRETH) was in charge of the Bill, and was therefore supposed to have considered it the most carefully, and to be principally responsible for the correct preparation of the measure. He concluded, therefore, that it would be in accordance with the Rules of the Council that he should reply to the remarks made in proposing the amendments, before any other Hon'ble Members expressed their opinions, or came to any determination on the points at issue between him and other Hon'ble Members.

The Hon'ble MR. MAINE said that his objection was to the amendment proposed by the Lieutenant-Governor in the enacting clauses. As to the amend-

ment of the preamble, he was disposed to agree with His Honour that there were objections to recognising in words political or religious animus as the basis of legislation. His Hon'ble friend Mr. Brandreth had apparently misunderstood the very innocent remarks he had made the other day. All that MR. MAINE had quarrelled with, was the practice of a Member signing a recommendation that a Bill be passed, when in fact he did not mean to recommend it. Many Members of Council were full of occupation, and naturally attached much weight to the recommendations of the Select Committee, which would be deprived of a great part of their value, if they purported to mean that which in fact they did not mean. But of course when, as in MR. MAINE's own case, a member of the Select Committee simultaneously circulated a notice of amendment, it was quite obvious that his agreement with the Select Committee would be understood by all persons to be qualified, and consequently he was not open to remark.

The Motion was put and agreed to.

His Honour the LIEUTENANT-GOVERNOR, in laying before the Council the amendments of which he had given notice, wished to say that, though, as a rule, he was averse to exceptional legislation—especially to exceptional criminal legislation—he fully recognized the necessity of such legislation in this instance, and entirely concurred in the principle of the Bill brought forward by the Hon'ble Mr. Brandreth, and in the arguments with which he supported his motion for leave to introduce it. One of the objects HIS HONOUR had in proposing these amendments was to make the Bill more effectual for the purpose for which it was intended. No one could have read the reports of the Panjáb Government, or have listened to the statement of the Hon'ble Mr. Brandreth, without being convinced of the absolute necessity of giving protection to life, and especially to the lives of European officers on the frontier, from murderous outrages, and there could hardly be any difference of opinion that it was necessary to provide summary punishment for those guilty of such crimes. As the Hon'ble Mr. Maine had observed, the effect of the Bill would simply be to give legislative sanction to a practice long in existence, and to provide a course of procedure which had really been observed by the local officers in anticipation of sanction and indemnity, which had, it must be remarked, always been given both by the Government of India and the Government at home. This last was an important fact to bear in mind, as it showed that the Government had good reason for believing that the powers proposed to be given by the Bill would be used with discretion and judgment.

His Honour's objections to the words which he proposed to omit from the preamble—and perhaps that amendment might be considered in the first instance —were, first, that they limited the action of the Bill to murders committed from political and religious motives; and, secondly, that those words seemed to imply that a man was to be tried by a special and summary mode, not on account of the crime he had committed, but on account of his political or religious opinions. As to the word "fanatic," it seemed to him that, as used in the original Bill, it was quite sufficient without the addition of the epithets added by the Select Committee. The term "fanatic" was specific enough to denote the particular kind of persons by whom these crimes had been committed, and to whom the provisions of the Bill were meant to apply, and while comprehensive enough to include all fanatics in the limited sense intended by the Select Committee, included none but those who committed these outrages from motives unintelligible except on the supposition of some previously existing enthusiasm, monomania, or other such cause. The words introduced by the Select Committee, instead of enlarging the meaning of the term "fanatic," really limited it; and if the words "political and religious" were left in, the Bill would apply to persons who were undoubtedly fanatics, but whom it would be very difficult to prove to be either political or religious fanatics. It was very easy to suppose that a British officer trying a case in one of the frontier districts of the Panjáb, whilst sitting on the bench and giving judgment adverse to one party, might suddenly and without other apparent provocation be murdered on the spot by the person conceiving himself to be aggrieved; and such a case no doubt ought and was intended to be provided for by the Bill. It seemed, therefore, to His Honour that the word "fanatic" by itself was much better than if coupled with the words suggested by the Select Committee. Then as to the other words in the preamble, "whose religion differed from that of the offender," he understood from what His Excellency the Viceroy had observed on the last occasion when the Bill was before the Council, that the Bill was intended not only for the protection of Europeans, but also of Hindú traders and others who might be the object of such attacks. With regard to that, he wished to observe that the Bill, as it stood, did not provide for the murder of a Hindú by a Hindú fanatic, of a Sikh by a Sikh, or of a Muhammadan by a Muhammadan. To take the case of the murder of a Muhammadan by a Muhammadan, the most common kind of fanatic. It was certain that some of the most trustworthy officers of Government had been Muhammadans, and he did not know any class of Government servants who had more distinguished themselves by their zeal and fidelity to Government, than some of its Muhammadan officers, and he thought that they were particularly

entitled to protection of that kind. It was perfectly natural that, where persons were actuated by religious fanaticism to commit crime, it should operate with greater intensity towards a person of the same religion, but a different sect, or towards a man who, belonging to the Muhammadan religion, was at the same time in the service of a Christian Government. That description of fanatic outrage was at least as likely to occur as any other. It seemed therefore that the words "whose religion differed from that of the offender," besides being objectionable as making religion the ground-work of special legislation, were very injurious, inasmuch as they limited the operation of the Bill. He would therefore move the omission of the words "political and religious" in lines 2 and 3, and of the words "whose religion differed from that of the offender" in lines 6 and 7, of the preamble.

The Hon'ble MR. BRANDRETH suggested that as the other amendments of which His Honour the Lieutenant-Governor had given notice were intimately connected with the amendments already moved, they should all be considered together.

The Hon'ble MR. GREY thought that it was competent to any Hon'ble Member to move his amendments separately or together at his discretion.

His Honour the LIEUTENANT-GOVERNOR would rather move the amendments separately, but was ready to submit to the decision of the Council.

The Hon'ble MR. SHAW STEWART thought the amendments should be moved separately, as the one was an amendment of the preamble, and the other of the penal clauses of the Bill.

His Excellency THE PRESIDENT having decided that the amendments regarding which His Honour the Lieutenant-Governor had already spoken should be first decided.

The Hon'ble MR. BRANDRETH said that he did not at all concur in the amendment which had been proposed. His Honour the Lieutenant-Governor had suggested that the words "political and religious" and "whose religion differed from that of the offender" should be omitted; but what the object was of doing so MR. BRANDRETH did not at all see. The question was, what did His Honour understand to be the meaning of the word "fanatic?" Did he mean a political or religious, or other fanatic? In either case MR. BRANDRETH did not think that it was desirable that the meaning should not be distinctly expressed, nor did it seem to him that the term could be accurately defined. There were

two classes whose safety he had in view: first, the servants of the Queen without reference to their religion; secondly, persons whose religion might differ from that of the fanatic: and it was with the view of making this distinction that he wished the words "political and religious" to be added. His Honour the Lieutenant-Governor wished entirely to abolish the distinction, but it had been much insisted on, both by the Chief Court of the Panjáb and His Honour the Lieutenant-Governor of the Panjáb, in their replies to the letters addressed to them on the subject of the Bill, and it was only last night that MR. BRANDRETH had received back the copy of the Bill he had sent to the Lieutenant-Governor of the Panjáb, in the margin of which was made an amendment similar to that by the Select Committee: the words were different, but the object to be attained was the same. In regard to what His Honour the Lieutenant-Governor of Bengal had said about a Muhammadan who murdered another Muhammadan, a servant of the Government, not being triable under the Act, MR. BRANDRETH thought that His Honour had entirely misunderstood the object of the Bill. The whole object was to secure that a person who attacked another from political or religious motives should be triable under the Act. MR. BRANDRETH had a good deal to say regarding the other amendment when it should be proposed, but these were the principal objections he had to the omission of the words proposed to be omitted, as it would make the object of the Bill very indistinct.

The Hon'ble MR. HOBHOUSE had a few words to say on the subject of the amendment, and regretted that he differed from the Hon'ble Mr. Brandreth, who did not concur in the proposed amendment. MR. HOBHOUSE would explain how it was that he had signed the report, and yet now agreed to the amendment. Subsequently to the signing of the report there was an informal meeting of the Committee at which he was unable, from other business, to be present; he did not therefore hear the arguments which had been adduced with regard to the insertion of the words "political and religious;" had he had heard them as he now heard them, he would no doubt have agreed to the amendment. Whoever might be the person who committed the murder, he must be actuated by fanatical motives (whether political or religious was nothing to the matter) to fall within the provisions of the Bill. The question was, whether the person who committed the act was actuated by fanatical motives or not? If he was, then he was a fanatic, and, being such, if he committed murder, he would come within the provisions of the Bill. He therefore thought the words proposed to be omitted did not seem essential.

As regarded the other amendment, namely, the omission of the words "whose religion differed from that of the offender," it so happened that it

was an amendment which he had himself proposed in Select Committee; but as the motion to omit those words was now strongly supported, he thought he was entitled to support it himself. It was not only such persons as His Honour the Lieutenant-Governor had referred to who would benefit by this Bill, but others. Take for instance the case of Lieutenant Ommanney: suppose one of his own Guide Corps had resisted the attempt to murder that officer, and had been himself murdered? The person who committed the outrage might have been a Sikh, and the person murdered of the same religion: he would not, therefore, be a person "whose religion differed from that of the offender." MR. HOBHOUSE did not therefore see why, if only a servant of Government, or a person of a different religion from that of the fanatic, were murdered, the fanatic should be punishable under the Bill; but if the person murdered were *not* a servant of Government or of a religion different from that of the offender, the fanatic should not be punishable.

His Excellency THE COMMANDER-IN-CHIEF thought that, in dealing with questions of this sort, it would be matter of regret were the Council to encumber a somewhat anomalous procedure with a too nice definition. If the amendment of His Honour the Lieutenant-Governor were not adopted, the Commissioner or other officer who had to try an offence under the Act might, with his assessors, have to enter into very refined discussions, instead of bringing the Act into operation. On every ground the Council ought to render easy the business of the Commissioner who was to try offenders under the Act, and not tie him up with a definition which might hereafter cast uncertainty on his acts, and render the proceedings actually liable to the very delay for the avoidance of which the present measure was proposed.

The Hon'ble MR. SHAW STEWART said that, with all due deference to the remarks of His Excellency the Commander-in-Chief, he considered that, in an exceptional Bill like the present, the utmost possible accuracy of definition was requisite, and, therefore, he would adhere to the recommendation by the Select Committee.

The Hon'ble Sir H. DURAND thought that one object of the amendment proposed by the Select Committee was, to restrict the operation of the Bill so as not to encroach on the ordinary Criminal Procedure, and it was with that view that the whole of the preamble was framed, because there was a natural aversion to such encroachment. If you did not put some sort of restriction, you would throw open a very wide ground for the application of the Bill, so much so, that he would almost defy any one to put any limitation to the provisions of

the Bill. That was not a Bill which, except for the absolute necessity of the case, any one would wish to see on the Statute Book at all; but admitting that necessity was a reason for having the Bill, and considering how desirable it was not to encroach on the ordinary course of justice, he did not think that the provision was open to the great objection that had been taken. The Hon'ble Mr. Brandreth had pointed out how the servants of Government were really impressed with the view that the application of such a procedure was necessary, and that the ordinary criminal law would not suffice, but that was no reason why the Bill should be made wider in its application than was necessary.

The Hon'ble MR. RIDDELL had no doubt as to the amendment, and thought that it should not be carried. If the restrictions as to religion were not retained, a definition of the term "fanatic" would be very desirable.

The Hon'ble MR. BRANDRETH explained that, with regard to the definition of the word "fanatic," His Excellency the Commander-in-Chief seemed to think that, if a loose definition were made, the offender would probably escape punishment; but he (MR. BRANDRETH) rather thought that the effect of such a definition would be that the offender would then be tried in the ordinary way.

The Motions were severally put and agreed to.

His Honour the LIEUTENANT-GOVERNOR then moved the omission of the words "political or religious" in the first line of section 2, and of the words "whose religion differs from that of the offender" in the 7th and 8th lines of the same section. He thought it unnecessary to say anything more in regard to these amendments, because, similar words having been omitted from the preamble, they must also be omitted from the enacting portion of the Bill.

The Hon'ble MR. SHAW STEWART did not consider that the discussion of a point in the preamble obviated the necessity of discussing the penal clauses, to which the Courts looked chiefly for guidance. There was one point not noticed in the discussion on the preamble, which ought to be considered before the words political or religious were omitted from the penal clause. A person might become a fanatic from causes other than political or religious excitement. A person under the influence of hallucination, caused by the influence of opium or other intoxicating drugs, might commit acts closely resembling those against which the Bill was aimed.

MR. SHAW STEWART therefore trusted that the Council would not consider this question to have been decided by the discussion on the preamble, but settle the point on its own merits.

The Hon'ble SIR H. DURAND entirely objected to the amendment on the same ground as before; it removed the restriction which was the main object of the Bill.

The Motion was put and agreed to.

His Honour the LIEUTENANT-GOVERNOR next moved that the word "person" be substituted for the word "fanatic" in the first line of section 2, and in the first line of section 4. His reason for proposing the amendment was this, that he thought that the Government prosecutor, or other person who might be charged with the prosecution of persons under the Act, would have very great difficulty in proving that the person charged was a fanatic. The word was of rather doubtful meaning, and it seemed to him that, when the preamble had described the kind of persons to whom the procedure under the Act was to be applied and when the Commissioner had exercised the discretion vested in him by section 10 of the Bill, and had formed the opinion that the offence with which the criminal was charged was one which was contemplated by the preamble, it should not be necessary, in order to convict the person of the crime, that he should be proved at the trial to be a fanatic. If the word "fanatic" were retained in the enacting portion of the Bill, HIS HONOUR thought that such proof would have to be given; and therefore, for the very reasons advanced by His Excellency the Commander-in-Chief in support of the previous amendments, he thought the word "fanatic" ought not to be retained; and that when the Commissioner had once decided on proceeding under the Act, he should require nothing but proof of the actual crime.

The Hon'ble MR. MAINE was not sure whether the Lieutenant-Governor had quite foreseen the effect of his amendment. The result of substituting the word "person" for fanatic in the enacting sections would be that this special measure would become the general law of the proclaimed districts. Everybody would be first arraigned under the proposed enactment when he was charged with murder or attempt to murder, though it was true that, if his case was shewn to fall under section 10, he would be entitled to be transferred to the ordinary procedure of the Code. Now MR. MAINE must say that the mass of the population of the proclaimed districts might be considered as having a right to be tried under the Code, until reason to the contrary were shewn;

and certainly they had a right not to be tried twice over, unless it were absolutely necessary so to try them. If his Hon'ble friend's amendment prevailed, it would seem that it would become an ordinary line of defence in a trial for murder, that the accused was a person of no political or religious principle, and consequently incapable of fanaticism, and entitled to an appeal. He thought that His Honour would scarcely persevere in his amendment unless he thought the condition of the frontier districts was such that every person accused of murder or attempt to murder ought to be tried by a summary procedure.

The Hon'ble MR. HOBHOUSE entirely concurred in the opinion of the Hon'ble Mr. Maine, as to what would be the effect of the amendment if introduced. MR. HOBHOUSE would now show what would be the practical effect on all persons in any proclaimed district. By the present law the penal clauses and procedure which applied were as follows:—If a person were charged with murder or attempt at murder, or abetment of murder, he was in the first instance placed under a preliminary investigation before the Deputy Commissioner of the District, who, if a *primâ facie* case were made out, would commit the offender to the Commissioner, and the Commissioner would try him and pass sentence. If the sentence was a capital one, the Chief Court would have to confirm it; if less than a capital sentence was passed, there would be an appeal to the Chief Court. So as regarded procedure. Then, as regarded punishment, murder was punishable under the Penal Code with death or transportation for life, and there was a discretionary power of forfeiture of property. Attempt at murder was punishable with ten years' imprisonment, or transportation for life if hurt should have ensued. Abetment of murder, if the act committed was committed in consequence of the abetment, was punishable as the act itself; if not, it was punishable with one-fourth or one-half of the punishment provided for the offence. When this Bill should be proclaimed, what would follow? Murder or attempt at murder was punishable with death or transportation for life. Then, as regarded procedure, there was no preliminary investigation; the Commissioner at once tried and sentenced the offender, and there was no appeal from or commutation of such sentence; and all this would be the effect of the simple substitution of the word "person" for the word "fanatic." This would become the law, and the other the exception. The Bill intended that the ordinary law should obtain as the general law, and this Act should come in for exceptional cases. But under the amendment before the Council, that state of things would actually be reversed. He would therefore oppose the amendment.

His Excellency THE COMMANDER-IN-CHIEF thought it necessary, in justice to himself, to say that he could not permit the application of his words to be

pushed as far as it had been, nor could he take the responsibility of the interpretation which had been applied to them; on the contrary, he would testify his meaning by supporting the view of the Hon'ble Mr. Maine with regard to the amendment before the Council. He would remind the Council of certain facts connected with the original introduction or contemplation of this measure. These facts had an important bearing on the observations of the Hon'ble Mr. Hobhouse. When the measure was first contemplated, the word *Gházi* was used in the preamble of the draft so as more especially to mark the class of persons whom the Bill was intended to affect; but *Gházi* was a champion who fought against unbelievers in Islam, and there were obvious reasons for not putting a stigma on any class of religionists in a law which would have to receive the sanction of His Excellency the Viceroy, and which, if any such term were used, would probably create a very injurious feeling among the Muhammadans. In adopting the word "fanatic," and refraining from using the more special term, we had not only met the views of the Panjáb Government in guarding our officers and fellow-subjects from political and other outrages, but had precluded ourselves from being charged with having recourse to class legislation.

His Honour THE LIEUTENANT-GOVERNOR said that, after the observations that had been made, he had no desire to press his amendment, which he had perhaps proposed on a wrong understanding of section 10. He thought that, when an offence of that nature had been committed, the Commissioner would, before the trial, form his opinion as to whether the crime was or was not of the nature contemplated in the Bill; and having come to a conclusion on that point, one way or the other, he would proceed with the trial. His HONOUR would therefore, with the permission of His Excellency, withdraw the amendment.

The Motion was accordingly withdrawn.

The Hon'ble MR. SHAW STEWART said that, whatever doubts he might have entertained in his own mind as to the chance of the Bill attaining the object stated in its title, namely, the suppression of murderous outrages in certain districts of the Panjáb, he thought it his duty, knowing so little as he did of the Panjáb, not to urge his opinion in opposition to that of persons who, like His Excellency the Governor General and the Hon'ble mover of the Bill, were intimately acquainted with the country and people and considered that there were certain districts where a prompt and severe retribution would be more effective than any slower procedure. For this reason he had not opposed the introduction of the Bill, but he thought that some safeguard was necessary in carrying out the extraordinary powers which the Bill would give to certain

officers in the Panjáb. In ordinary times, and in cases where a murder had actually been perpetrated, he thought that these powers might be safely given. But the case was different in times of political excitement, when the vehement indignation described by the Hon'ble Mr. Brandreth as caused by a single outrage was intensified and magnified by strong political feeling. The Bill also would meet cases of abetment as well as cases of actual murder; and, looking to the very wide definition of the word "abetment," given in the Indian Penal Code, he thought the Council could hardly be aware of the results which might possibly follow. For this reason he had proposed an amendment which was based on the principle of limiting the power of summary execution after sentence, to cases in which a fairly constituted bench of assessors had concurred in the finding; and he had provided for the constitution of the assessors by reference to the religious beliefs of the murderer and his victim, which was in fact the base of the operation of the Bill. But the alterations which had been made in the Bill by the amendments of the Lieutenant-Governor rendered it necessary to modify the amendments which he (MR. SHAW STEWART) had circulated. With the permission of His Excellency the President, he would therefore submit an amendment which would have the effect of providing, as a safeguard against undue severity, that summary execution without confirmation should follow sentence only in cases where a murder had actually been committed, leaving all cases of abetment to be disposed of according to the ordinary procedure.

The Hon'ble MR. MAINE said that it was for His Excellency the President to consider whether he would allow the amendment to be put. As no notice had been given of it, it could not be put as a matter of course. He therefore suggested that it should be postponed, and the debate adjourned, especially as his Hon'ble friend Mr. Shaw Stewart had named an attentive study of the law of abetment as a condition of the proper understanding of his proposal.

The Hon'ble MR. RIDDELL said that as Mr. Maine had remarked that the Council must study the law of abetment, it would be better to adjourn the debate.

The Hon'ble MR. MAINE said that he had not accused the Council of ignorance, but he himself was unprepared to say what would be the effect of the combination of his Hon'ble friend's amendment with the law of abetment.

The Hon'ble MR. COWIE agreed that the debate should be postponed, and suggested that the Bill should be remanded to the Select Committee.

The Hon'ble MR. SHAW STEWART postponed his amendment, and the further consideration of the Bill was also postponed.

ORIENTAL GAS COMPANY EXTENSION BILL.

His Honour THE LIEUTENANT-GOVERNOR presented the Report of the Select Committee on the Bill to empower the Oriental Gas Company, Limited, to extend their operations to certain places in British India.

EXEMPTION OF VILLAGES (BOMBAY) BILL.

The Hon'ble MR. SHAW STEWART, in moving for leave to introduce a Bill to exempt certain villages in the Bombay Presidency from the operation of the Regulations and Acts in force in that Presidency, said that there were several villages which were included in the Schedules of various Regulations and Acts relating to Bombay, and which were thereby made subject to the general law prevailing in that Presidency. It had now been found that those Schedules were erroneous, and that some of the villages included in them should not have been placed under the general law. The Bombay Government had therefore drafted a Bill for their exclusion, but were doubtful whether, under the provisions of the Indian Councils' Act, 1861, it was competent to the Governor of Bombay in Council to pass the law, as the exclusion of these villages from the operation of the general Regulations would interfere with the jurisdiction of the Bombay High Court. That doubt seemed well founded, and it would therefore be necessary for the Governor General in Council to legislate for the purpose. The Bill would take the form of a simple repealing Act, by which the villages which had been erroneously included in the Schedules to which he had referred, would be removed from the operation of the general law.

The Motion was put and agreed to.

CORONERS (STRAITS' SETTLEMENT) BILL.

The Hon'ble MR. MAINE asked permission to postpone his motion for leave to introduce a Bill to alter and amend the law relating to Coroners and Coroners' Inquests in the Straits' Settlement.

Leave was granted.

SARÁÍS AND PURAOS BILL.

The Hon'ble MR. RIDDELL introduced the Bill for the regulation of public Saráís and Puraos, and moved that it be referred to a Select Committee with instructions to report in a fortnight. He said that, when he moved for leave to introduce this Bill, he referred to the absence of any law for the regulation of Saráís, and mentioned that, on the representation of the

Inspector General of Police, the Government of the North-Western Provinces had urged that a law on the subject should be passed. The Inspector General of Police reported that, at present, every facility was given to the operations of thieves and robbers against travellers lodging or halting in a Saráí. There was no law to compel owners of Saráís to take ordinary precautions to secure travellers from thefts, by employing watchmen and keeping the gates and walls in a state of repair. The provisions of the Bill which he now introduced would, he hoped, secure greater attention to these points; but while attempting to provide for safety of travellers from robbery, and for the maintenance of Saráís in a habitable state of repair, he had endeavoured to avoid giving any pretext for Police interference with travellers.

The Bill required that the names and residences of the keepers of all Saráís should be registered without charge. It empowered the Magistrate of the District to refuse to register, as keeper of a Saráí, a person who could not produce a certificate of character; a similar power was given to Magistrates in England in regard to common lodging-house-keepers. The Bill then declared, in section 7, the duties of the keeper of a Saráí. The next section was a re-enacting in a different form of the existing law. By the three following sections the Magistrate of the District was empowered to shut up, secure and clear deserted Saráís, and to pull down or repair a Saráí in a dangerously ruinous state; similar powers were given in the English Public Health Act, 11 & 12 Vic., cap. 63. By section 13 the Local Government might make rules, and by section 14 very moderate penalties were imposed for disregarding the provisions of the Act. If referred to a Select Committee, he had little doubt that the details of the Bill would be improved, but he trusted that no provision would be introduced authorizing any more minute interference with the internal arrangement of Saráís. The law would require that public Saráís should be kept in a state of habitable and wholesome repair, and that watchmen should be employed, when necessary, for the protection of travellers; but he should be very sorry to attempt to fix a tariff of charges, or interfere in any way between the keeper of a Saráí and his customers.

The Motion was put and agreed to.

REGISTRATION OF BOOKS BILL.

The Hon'ble Mr. Hobhouse introduced the Bill to provide for the preservation of copies of books published in British India and for the registration of such publications, and moved that it be referred to a Select Committee with instructions to report in a fortnight. He said that, on the last occasion on which he addressed the Council with regard to this Bill, he had stated

BENGAL SECRETARIAT LIBRARY

fully what were the circumstances which led to the introduction of the Bill and the object with which it was introduced. He would now state again shortly, that the object of the Bill was, first, that a complete catalogue of all books published in India should be made and sent to England; and secondly, that one copy of the books themselves should also be sent to England for the benefit of scholars, and that two other copies of those books should be preserved and registered in this country for the same purpose, and also in order that the Government might, through the literature of the country, be better informed of the condition, opinions, and feelings of the people. He would now state briefly the provisions of the Bill, which were not many. It provided that three copies of every book published in British India should be delivered by the publisher to certain officers named by the Local Government: those officers were to give receipts for the books, and to pay for them at the prices at which they were *bonâ fide* sold to the public. Of these copies, one was to be sent to the Secretary of State; another was to be kept in some public library in this country; and the third was to be disposed of as the Local Government might desire, the object of requiring the third being that, in case one of the other copies should be lost or damaged, it might be replaced. There was a further provision that a register should be kept in the form of a complete catalogue, which would contain the title of the book, and a translation of it if it was not written in English; the language of the book; the name of the author, translator or editor; the name of the publisher; the number of sheets or pages the book contained, and so on: in fact, a scientific catalogue, the entries in which for each quarter would be published from time to time in the official *Gazette*. It was also proposed to give power to the Local Government to frame rules for carrying out the provisions of the Act. In the first instance, the Act would extend only to the lower Provinces of Bengal; but if any of the other Local Governments should desire to introduce it into the territories under its Government, this could be done by a notification to that effect, and the Act would thenceforward take effect in those territories. The word "book" was defined to mean every volume, part, or division of a volume, pamphlet, newspaper and sheet of letter-press, whether in English, Sanscrit, or any of the vernacular languages, and every sheet of music, map, chart or plan separately published. The only provision of the Bill regarding which, as the Bill was at present drafted, there could be much doubt, was that which declared that the book should be delivered by the *publisher* thereof. He was told that, in this country, it was in most cases extremely difficult to find the publisher of a book: ordinarily, a person who wished to publish a book went to a printer and got a certain number of copies printed; but how he published the book and disposed of those copies was not known. It was true there was an Act (No. XI of 1835)

requiring the printer and publisher of every book to put their names to it; but he believed that Act was not followed out. It might therefore be a question whether it should not rather be the printer, than the publisher, who should be required to deliver the copies to Government. By the English Act (5 & 6 Vic., cap. 45) all publishers were compelled to deliver gratis one copy of each book published by them to the British Museum, and they might be called upon to deliver four other copies to certain other libraries named in the Act. That Act extended to the territories under the Government of the East India Company, but had hitherto never been enforced in this country, and there were probably some technical difficulties regarding its application to India; but it might be enforced at some future time, and then, if the proposed Act did not provide for paying the publisher, he would be compelled to deliver no less than eight copies without remuneration. Now this, it seemed to him, especially in the case of valuable works which, besides the letter-press, contained prints or photographs, would be rather a hardship on the publisher, and he was also told by persons competent to judge, that if the copies were not paid for, the proposed Act would become a dead letter. The Bill therefore provided that the three copies which it required every publisher to deliver, should be paid for at the price at which the book was sold to the public. There might, it was true, be some sort of fraud perpetrated on Government, in the case of a man publishing a trumpery book, getting a few dishonest friends to conspire to buy copies at a high rate, and then compelling the Government to purchase the book at an exorbitant price; but that was precluded by the clause which provided that the price should be that at which the book was *bonâ fide* sold for cash to the public. Some books, on the other hand, were not sold: he was told that a great many vernacular prints were not for sale; and such cases would have to be considered and provided for by the Select Committee to whom the Bill would be referred. There was a provision that the Act should only be in force for two years: it was a question whether there should not rather be a power enabling the Government to suspend the operation of the proposed Act whenever it was thought fit. That was also a point which could be considered by the Select Committee; but he thought the provision seemed a useful one with regard to a tentative measure of this kind.

The Motion was put and agreed to.

PRESIDENCY JAILS' BILL.

The Hon'ble Mr. Maine presented the Report of the Select Committee on the Bill to amend the law relating to the custody of prisoners within the local limits of the original jurisdiction of the High Courts at the Presidency Towns.

THE INDIAN SHIPPING BILL, 1867.

The Hon'ble MR. SHAW STEWART presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Merchant ships, Seamen and Passengers by Sea.

The following Select Committees were named :—

On the Bill for the regulation of public Saráís and Puraos—The Hon'ble Mr. Maine, the Hon'ble Colonel Sir H. Durand, the Hon'ble Mr. Hobhouse and the Mover.

On the Bill to provide for the preservation of copies of books published in British India and for the registration of such publications—The Hon'ble Messrs. Maine, Riddell, Shaw Stewart and the Mover.

The Council adjourned till the 1st March, 1867.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 22nd February, 1867.

Government of India Central Printing Office.—No. 837 L. D.—15-5-82—50.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 1st March 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant Governor of Bengal, K. C. S. I.
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Colonel Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble H. B. Riddell.
The Hon'ble E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble C. P. Hobhouse.
The Hon'ble J. Skinner.
The Hon'ble D. Cowie.

ORIENTAL GAS COMPANY EXTENSION BILL.

His Honour the LIEUTENANT GOVERNOR moved that the Report of the Select Committee on the Bill to empower the Oriental Gas Company, Limited, to extend their operations to certain places in British India, be taken into consideration. The Select Committee had made no amendments in the Bill.

The Motion was put and agreed to.

His Honour the LIEUTENANT-GOVERNOR also moved that the Bill be passed.

The Motion was put and agreed to.

ADMINISTRATION OF JUSTICE (DARJÍLING) BILL.

His Honour the LIEUTENANT-GOVERNOR also presented the Report of the Select Committee on the Bill to make further provision for the administration of justice in the District of Darjíling.

PRESIDENCY JAILS' BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to amend the law relating to the custody of prisoners within the local limits of the original jurisdiction of the High Courts at the Presidency towns, be taken into consideration. He said that Act XII of 1865, as had been before explained to the Council, had been originally framed for the purpose of being introduced into the Bengal Legislature; but owing to a technical difficulty, His Honour the Lieutenant-Governor had brought it into the Imperial Council, and it had become law. The immediate occasion of the present measure had been a request of the Madras Government that the Act might be extended to Madras, and Calcutta had only been included in order to bring the whole law on the subject within the compass of a single enactment. The course pursued had been so far fortunate that it had enabled MR. MAINE to have several conferences with the present Chief Justice of the High Court at Fort William, and owing to his suggestions and those of other Judges, the Select Committee had recommended that certain duties of the Superintendent of Jails, which by the existing law were left to inference, should be expressly set forth in the present measure. Such duties were those of retaining in custody prisoners for contempt, prisoners committed for confinement under the Mutiny Act, prisoners reserved when the High Court was not actually sitting, and prisoners committed by the Coroner. It was not easy, when the legislature had to deal with so very ancient an officer as the Sheriff, to be sure that all his duties had been completely transferred to a new official. But to prevent any danger of omission, a Section had been introduced of a general character :—

Superintendents to detain persons committed.

"The said jails shall be the jails of Calcutta, Madras and Bombay respectively, and the Superintendents so to be appointed are hereby respectively authorized and required to keep and detain all persons duly committed to their custody pursuant to the provisions of this Act or otherwise, by any Court, Judge, Justice of the Peace, Magistrate of Police, Coroner or other public officer lawfully exercising Civil or Criminal jurisdiction according to the exigency of any writ, warrant or order by which such person shall have been committed, or until such person shall be discharged by due course of law."

The Motion was put and agreed to.

The Hon'ble MR. MAINE moved that, in lieu of the definition of "Magistrate" in Section 1, the following be substituted, *viz.*—

"Magistrate" includes a Magistrate of Police appointed under any Act for the time being in force for regulating the Police of the towns of Calcutta, Madras and Bombay."

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the words "in Calcutta as if the words Superintendent of the Presidency Jail, and" be omitted in lines 8, 9 and 10 of Section 18.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill as amended by the Select Committee, together with the amendments now adopted, be passed.

The Motion was put and agreed to.

INDIAN SUCCESSION ACT, 1865, EXTENSION (STRAITS' SETTLEMENT) BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill to extend the Indian Succession Act, 1865, to the Straits' Settlement.

CIVIL COURTS (JHÁNSÍ) BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to define the jurisdiction of the Courts of Civil Judicature in the Jhánsí Division.

PORT DUES (MOULMEIN AND BASSEIN) BILL.

The Hon'ble MR. GREY moved that the Report of the Select Committee on the Bill for the levy of enhanced Port-dues in the Ports of Moulmein and Bassein, and to provide for the establishment and maintenance of Coast Lights in the eastern part of the Bay of Bengal, be taken into consideration. He said that the only substantial alteration which the Committee had made was to provide, in Section 3 of the Bill as amended by them, for the prospective levying of tolls on vessels making voyages from Rangoon or Moulmein to Bassein, or from Bassein to Rangoon or Moulmein.

The levying of tolls on ships making those voyages was prohibited by Section 6 of the original Bill; but the Chief Commissioner of British Burmah had brought to notice that it would be necessary to levy such tolls when the light house in the Baraguay Flat or the Krishna Shoal should have been established and maintained. It was therefore thought necessary to insert a clause bringing these voyages under the provisions of Section 3, in the same manner as voyages from Calcutta to Akyab.

The Motion was put and agreed to.

The Hon'ble MR. GREY also moved that the Bill as amended be passed.

The Motion was put and agreed to.

PÁNDHARÍ TAX (CENTRAL PROVINCES) BILL.

The Right Hon'ble Mr. Massey moved that the Report of the Select Committee on the Bill to provide for the re-assessment of the Pándharí tax in certain parts of the Central Provinces, be taken into consideration. He said that the Select Committee to whom the Bill had been referred had made two amendments of some importance. The Bill, as originally drawn, was limited to the Native community in accordance with the practice under which the tax had hitherto been levied; but there appeared to be no sufficient ground for adhering to that limitation, and the Committee had accordingly made Europeans subject to the operation of the tax, in the same manner as Natives had hitherto been. As to the rates of assessment, the Committee, considering them too high, had provided that no person should be assessed at a rate exceeding two per cent, and had limited the maximum amount leviable from any tax-payer to five hundred rupees, instead of one thousand rupees as it stood in the Bill as originally drawn. The latter sum was considered to be excessive, and the Committee were unanimously of opinion that it might properly and conveniently be reduced. A provision had also been made limiting, in the first instance, the process for the recovery of arrears to distress and sale of the moveable property of the defaulter. Mr. Massey hoped that these amendments would be considered improvements on the Bill as it was originally drafted, and that the Bill as amended by the Select Committee would be passed.

The Hon'ble Mr. Brandreth said that the Bill had been originally prepared by the Chief Commissioner of the Central Provinces, and he therefore concluded that it correctly described the tax which was there collected under the name of the Pándharí tax; as such it did not appear to be based on any very correct principles. It was not a license-tax on trades and professions, as it was not necessary that any one should exercise a trade or profession in order to be subjected to it. Nor was it a tax on incomes other than agricultural, because, by Section 3 of the Bill, certain persons on receipt of fixed salaries and pensions were to be exempted. If tried by any general rule of taxation, the Pándharí tax was no doubt open to serious objections. There appeared no sufficient reasons why persons who invested all their money in Government paper should be subjected to the tax, while persons who invested their whole possessions in landed property should not be subjected to it. But the Select Committee had not had before them any information which would have enabled them to make any material alterations in the Bill; they were obliged, therefore, to accept it very much as received from the Chief Commissioner of the Central Provinces. A great argument in favour of the tax was that it had been in existence for a very long time, and was not op-

posed to the feelings of the people. It was moreover very difficult to devise any new system of taxation in India which would not be open to objection in one form or another. With regard to the amendment bringing Europeans under the operation of the Bill, he would observe that, where Europeans were placed in the same circumstances as those Natives who would be subject to the tax, there seemed no reason why they should be exempted. It was not clear whether it was intended that the Chief Commissioner and other officers in the service of Government should be exempted, but power was given to the Chief Commissioner, with the sanction of the Governor General in Council, to exempt persons on receipt of fixed salaries. It was not probable that the Chief Commissioner intended the Act to apply to such persons, because the Bill originally did not include Europeans. A tax on persons other than those who paid the land revenue was, he believed, very common under former Governments in many parts of India, but in the Bengal Presidency the Central Provinces' administration alone was entitled to the credit of having retained a tax of this nature for imperial purposes; the reason why he intended voting for this Bill was not that he considered the Pándhari a perfect tax, but because it was certainly necessary to provide an indemnity for anything done in regard to the collection of this tax hitherto; and until a better tax could be devised, it was certainly desirable that the tax should continue to be collected as heretofore; he would, therefore, with these remarks, beg to support the motion.

The Motion was put and agreed to.

The Right Hon'ble Mr. Massey also moved that the Bill as amended be passed.

The Motion was put and agreed to.

PANJÁB MUNICIPAL BILL.

The Hon'ble Mr. Brandreth moved that the Report of the Select Committee on the Bill to make better provision for the appointment of Municipal Committees in the Panjáb, and for other purposes, be taken into consideration. He said that several amendments had been introduced into this Bill by the Select Committee which had no doubt considerably improved it, but he did not intend to ask the attention of the Council to more than one or two of those amendments. In Section 12, which gave power to the Lieutenant Governor of the Panjáb to suspend or limit all or any of the powers of any Municipal Committee, and to cancel any of the proceedings or rules of such Committee, he was obliged to consent to the omission of the word "modify". It was in regard to this Section that he had had most difficulty in overcoming the objections of one

or two Members of the Committee, and inducing them to let the Section stand in its present modified form. He thought it was necessary that the Lieutenant Governor should have the powers given by the Section as it now stood. Municipal Committees were controlled by the necessity of obtaining the previous sanction of the Lieutenant Governor to any tax they wished to impose. But suppose a Committee, influenced by the Deputy Commissioner, wished to levy a tax on a commodity such as salt, the great marts for which were limited in the Panjáb to one or two parts of the country? or suppose they should levy a tax on some great branch of industry, which might be materially injured by the imposition of such a tax? There were many such taxes already sanctioned, and no doubt without a very minute scrutiny of the items of which those taxes were composed, such injurious imposition might frequently be made. It seemed, therefore, to him that it would be proper to give the Lieutenant Governor the power of cancelling any objectionable proceedings of this kind. A Bill of this nature had also been applied for by the Chief Commissioner of the Central Provinces, and it was thought that the present Bill would suit those provinces as well as the Panjáb. Accordingly, an additional Section had been introduced enabling the Governor General in Council to extend the Bill to any town in the Central Provinces. A new Section had also been added by which provision was made that the Act should expire in five years. Several of the provisions of the Bill were of an experimental character, and it was therefore thought that the propriety of continuing the Act should be reconsidered after that interval. By Mr. Brandreth's agreeing to that provision, several differences which existed between himself and other Members of the Committee were smoothed over, as the Committee were quite willing to give the Act a fair trial for five years. He might also mention that the Lieutenant Governor of the Panjáb approved of the Bill as amended, but regretted that his proposal for directing a portion of the funds of the Municipal Committees to be placed at the disposal of Government should have been omitted, as the Select Committee had not approved of it. No doubt, under the Act for appointing a Municipal Committee in Lucknow, the powers of the Committee were very limited, but the Members of the Council at the time that Act was passed must have held very different opinions, as under that Act the Municipal Committee had no voice whatever with regard to the things to be taxed, or the amount of taxation; they could only claim one-third of the net collections of the tax.

The draft Bill received from the Chief Commissioner of the Central Provinces restricted the powers of the Municipal Commitees even still more. Mr. Brandreth had taken charge of the Bill, but he found that it would be quite impossible, after the expression of the opinion of the Council on the motion to

introduce the present Bill, to propose a Bill of that character for the sanction of the Council. The Select Committee appeared willing to agree to any powers proposed to be vested in Municipal Committees, but wished to limit the powers of the Chief Commissioner or the Lieutenant Governor as much as possible. The Chief Commissioner of the Central Provinces did not approve of the Bill as amended by the Select Committee. It would be observed that the Bill had not, however, been made applicable to the Central Provinces in the first instance, but that only a power of extension had been provided. MR. BRANDRETH could not but think that the Governor General in Council would hold that the Municipal Committees ought to be invested with greater powers than they had under the Lucknow Act. The Chief Commissioner of Oudh approved of the Bill, and had suggested that steps be taken to extend the Act to Oudh. If the motion which MR. BRANDRETH now made was carried, he would propose an amendment by which the Act might be extended to Oudh as well as to the Central Provinces.

The Hôn'ble MR. HOBHOUSE said that, as he was one of those who *primâ facie* disapproved of many of the provisions of the Bill, he thought it right to state shortly the reason why he agreed to the Bill as it at present stood. In the first place, he had not been aware of the nature of the Municipal Committees in existence in the Panjáb. He now found that, as far as the persons composing those Committees were concerned, they were in fact elective bodies; that they were chosen by members of different trades, or in some such way, from amongst the towns-people by the towns-people themselves. He also found that those Committees had done, and were doing, a great deal of good service, and that in many places the authorities spoke of them as composed of persons taking a real interest in works of improvement in the towns; and he found further that they were generally composed of Natives; that the officers of Government were in a great many cases not even members of the Committee, and that, practically, the whole business of the Committee was carried on by Native members. It was therefore quite clear that, if the papers laid before the Select Committee showed—and he believed that they did show—what was going on in the Panjáb, an entirely novel system of governing towns in that province was at this moment being tried. It therefore seemed to him that municipal bodies of that kind were carrying on a business of a very important nature, and without any regular control of the authorities. It was essential to have some real control over their powers, and he therefore now agreed to that Section of the Bill which gave the Lieutenant Governor power to suspend or limit any of the powers of Municipal Committees, and cancel their proceedings whenever necessary. For instance, it might happen amongst elective bodies, that some sort of taxation might be introduced which might cause great harm to the country.

Another objection that he had expressed to the Bill was that it gave no power to the Committees, while it gave great power to the Lieutenant Governor. In this he found that he was to some extent mistaken. He thought now that the Committees had a real power, and one which it was very important to watch. In the first instance, they were the persons who must originate the tax out of which the municipal funds were to be created, and they must not only originate the tax, but must also declare the amount and rate of taxation; and it was only when they had made a proposition for taxation, that the sanction of the Lieutenant Governor came in. The Committees had also several other powers. There was, out of the funds to be collected, what was to be called a common fund; of that fund they had the entire control and application, subject to certain provisions of the Bill. They might also appoint their own officers, fix their salaries, and remove them as they thought fit, and they had the further power of making rules for carrying on their duties. Although it was declared that Committees must provide for a Police establishment, the cleanliness of streets, roads, drains, and so on, they had at the same time power to construct new streets, drains, tanks, and water-courses, and to construct and provide for the management of poorhouses, dispensaries, market-places, and other works of general utility, and generally to do all things necessary for purposes of conservancy and local improvement. They were also to make provision for the establishment of schools, and otherwise for the promotion of education. They had also power to define, prohibit, and remove nuisances, and to provide for the registration of births and deaths. These seemed really important functions, and his objection to the powers conferred on Municipal Committees did not therefore now exist. They had a real power and seemed to have been exercising it hitherto with very great attention and success. Under these circumstances, he thought the power given to the Lieutenant-Governor to suspend any of their powers, or cancel anything that might have been done by them, was quite sufficient, and he had therefore now no objection to the Bill.

His Excellency the COMMANDER-IN-CHIEF said, with regard to what the Hon'ble Mr. Hobhouse had mentioned, he should like to put a question to the Hon'ble Member who was in charge of the Bill. HIS EXCELLENCY did not wish to say that he dissented from the Bill, but he wished to know whether the consequences of a particular part of Section 10 had received that attention from the Select Committee which the Council had a right to expect. It was stated in the 10th Section, that any Committee might make rules for regulating the time and place of their meetings, the conduct of their business, the division of duties among themselves, and the salaries, appointment, suspension, and removal of their officers. It had been his fortune in certain parts of

India, when watching the effect of municipal measures not dissimilar to the present, to observe that, in the matter of salaries, the municipal authorities were very apt to come into direct collision with the executive body from which they sprung. It was quite impossible that municipal business could be carried on without the employment of officers with salaries sufficient to induce them to forsake all other business, and devote their time exclusively to that of the Municipality. He had known one or two important occasions when the municipal authorities came into contact with, and contested the wishes of the Government, and the mode they had adopted of enforcing their opposition was, if possible, to reduce or suspend the salary of some important functionary on whom the very existence of the municipality depended. He had seen this take place; animated debates went on in opposition to the Government, which was obliged to adopt very summary measures, for otherwise the municipal business would have come to a stand still. The Hon'ble Mr. Hobhouse had detailed to the Council the very great powers which were confided to Municipal Committees, and which were controlled in a general manner by the 12th Section of the Bill. The Hon'ble Mr. Brandreth had suggested that he was dissatisfied with that Section, because it took away from the Lieutenant Governor such a power as he (the COMMANDER-IN-CHIEF) ventured to think might possibly be required for the control of the power given in the 10th Section. He thought that that was a matter which should not be treated hurriedly. If the Hon'ble Member in charge of the Bill should be inclined to divide the Council as to that particular part of the 10th Section which related to salaries, HIS EXCELLENCY would be happy to render him his support.

The Hon'ble MR. BRANDRETH observed that the matter had been very carefully discussed by the Select Committee. Though it did not meet with his approval at the time, he did not now wish to suggest any amendment.

The Hon'ble MR. MAINE said that His Excellency the Commander-in-Chief would observe that the Bill was limited to five years. There could be no doubt that the Panjáb Government was trying a set of very interesting experiments, and among them was that of permitting Committees to fix the expenses of their establishments. If, at the end of the period to which the measure was limited, it proved that these municipal bodies had laid themselves open to the suspicions which, no doubt with some reason, had been expressed by His Excellency, it would be a grave question whether the present enactment should not be modified in the sense of the Commander-in-Chief's remarks.

The Hon'ble MR. HOBHOUSE believed it was on his recommendation that the word "modify," which would meet the objection of His Excellency the

Commander-in-Chief, was struck out. If the rest of the Council were willing to re-insert the word, he would raise no objection.

The Hon'ble MR. RIDDELL objected to any such amendment being made without due consideration: if it were wished to make the amendment, the consideration of the Bill should be deferred for a week.

HIS EXCELLENCY THE PRESIDENT said that he was told that the objections which had been raised to the Bill on a former occasion had been withdrawn. He was always of opinion that it was very important that the powers proposed to be conferred by the Bill should be given, and he was quite confirmed in that opinion from his own knowledge and experience of what had hitherto been done on the subject of municipal management and taxation in the Panjáb, where he had always found the municipal system to work well. The objections had, moreover, been effectually met by the provision limiting the operation of the Act to five years, and he had every hope that the experiment would be successful. The powers of the Committees were very important, but he did not think they were liable to abuse. He thought, also, that the powers given to the Local Government were proper and reasonable. The Committees had hitherto worked in accord with the Lieutenant Governor, and HIS EXCELLENCY thought they would continue to do so. He was quite sure that the present Lieutenant Governor of the Panjáb, or any future Lieutenant Governor, would never think of initiating or proposing any rule or principle without having previously consulted, not only the Municipal Committee, but the leading inhabitants of the town which it would affect. If any rule were considered objectionable, the Lieutenant Governor would no doubt modify it, or arrange for its modification.

The Motion was then put and agreed to.

The Hon'ble MR. BRANDRETH also moved that the following Section be substituted for Section 21 :—

"21. Section 20 of this Act shall apply to the Central Provinces and Oudh, as if for the words 'Lieutenant Governor or Chief Commissioner of the Panjáb,' the words 'Chief Commissioner of the Central Provinces and Oudh' were substituted, and as if the extension next hereinafter mentioned had been made. And it shall be lawful for the Governor General of India in Council to extend this Act or any of its provisions, by notification in the *Gazette of India* and the local official *Gazette*, to any town in the territories respectively under the administrations of the Chief Commissioners of the Central Provinces and Oudh, and on and after such extension, this Act shall be construed in such town as if the words 'Lieutenant Governor' were defined to include Chief Commissioners of the Central Provinces and Oudh; as if for the word 'Government,' the word 'administration' were sub-

Application of Section 20 to Central Provinces and Oudh.

Power to extend this Act to Central Provinces and Oudh.

stituted; and as if for the words and figures 'Act No. XXVI of 1850 (*to enable improvements to be made in towns*),' the words and figures 'Act No. XVIII of 1864 (*to provide for the appointment of a Municipal Committee for the City of Lucknow*)' were substituted. Provided that, when such extension shall be effected, the previous sanction of the Governor General of India in Council shall be necessary to the validity of any order made by a Chief Commissioner under Section 12 of this Act."

The Motion was put and agreed to.

The Hon'ble MR. BRANDRETH also moved that the words "or Oudh" be inserted after the word "Provinces" in line 5 of Section 22; and that the words "or Oudh, as the case may be," be inserted after the word 'Provinces' in line 7 of the same Section.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART observed that there was an important provision in Act XXVI of 1850, an Act which was mentioned in the Bill before the Council. It was that the publication of municipal accounts every year should be rendered compulsory. It was very important that those accounts should be published, not only in English but in the vernaculars, in order that the affairs of the town might be made known to the people. If the Hon'ble Mr Brandreth should desire to move such an amendment, it would be well to postpone the further consideration of the Bill.

The Hon'ble MR. BRANDRETH thought that the Section of the Bill empowering the Lieutenant Governor to make rules, amongst other things, for the rendering of accounts relating to the expenditure of the municipal fund, would enable the Lieutenant Governor to provide for the publication of those accounts.

The Hon'ble MR. RIDDELL thought it was necessary that the accounts should be published. He had himself once asked to see the accounts of certain Municipal Committees, and it was curious to see the modes of taxation adopted. The Commissioners were gradually levying taxes of the nature of transit-duties, which must have a very injurious effect on trade. The limit of five years would no doubt to a great extent remove that objection; but only two days ago he had seen a remark in the *Delhi Gazette*, in which it was stated that a town had been ruined in consequence of a toll levied on goods coming into it. That town was formerly a large cotton-mart, but this year, according to the statement in the *Delhi Gazette*, the trade had been ruined. He thought it was desirable that the accounts should be published.

The Hon'ble MR. HOBHOUSE thought that the objection would be completely met, if, after the word "rendering," the words "and publishing" were inserted.

The Hon'ble MR. SHAW STEWART accordingly moved that the words" and publishing " be inserted after the word " rendering " in line 10 of Section 7.

The Motion was put and agreed to.

The Hon'ble MR. BRANDRETH also moved that the Bill as amended by the Select Committee, together with the amendments now adopted, be passed.

The Motion was put and agreed to.

EXEMPTION OF CERTAIN VILLAGES (BOMBAY) BILL

The Hon'ble MR. SHAW STEWART introduced the Bill to exempt certain villages in the Bombay Presidency from the operation of the Regulations and Acts in force in that Presidency, and moved that it be referred to a Select Committee with instructions to report in a week.

The Motion was put and agreed to.

TRANSSHIPMENT OF GOODS (BOMBAY) BILL.

The Hon'ble MR. SHAW STEWART also presented the Report of the Select Committee on the Bill to authorize the transshipment, without payment of duty, of goods imported into Bombay by steamers.

STAMP DUTIES BILL.

The Hon'ble MR. HOBHOUSE introduced the Bill to amend the law relating to stamp-duties, and moved that it be referred to a Select Committee with instructions to report in a fortnight. He said, on the last occasion on which he addressed the Council on the subject of this Bill, he had entered so fully into the circumstances which led to the introduction of the Bill and the principles on which it was based, that he would not detain the Council now longer than was absolutely necessary. He would state shortly the circumstances which led to the preparation of the Bill, and show how the different Sections of the Bill bore on the observations that he had made on the last occasion.

The first reason which led to the Bill was a proposition on the part of Mr. Strachey that a certain sum of money should be expended in enhancing the salaries of ministerial officers and of the judicial officers of certain Courts. That proposition involved an extra expenditure of about fifteen lákhs of rupees:

of that sum about eight lákhs had already been sanctioned. Mr. Strachey's proposition had been referred to the Presidencies of Bombay and Madras, and from those Presidencies also it was expected that propositions would come up, involving an expenditure of about fifteen lákhs more, or in all about thirty lákhs for the three Presidencies. To meet that and, generally, the expenditure incurred on account of the Courts, a Commission was appointed for considering the stamp-laws, and before them was laid a proposal of the Hon'ble Mr. Roberts. That proposal embraced simply an amendment of the scale in Article 11 of Schedule B of the stamp-law; but the recommendations of the Stamp Commission went further, and as those recommendations would be found embodied in the Bill, he would at once revert to its provisions. The first provision which required notice was Section 2 of the Bill. That was a matter with which the Stamp Commission had no concern, but which had come up after it had commenced to sit. By Section 30 of the stamp-law, certain Courts established by Royal Charter were exempted from the operation of Schedule B. The High Court of the North-Western Provinces was one so established, and the provisions of Schedule B did not apply to it. That Court exercised very nearly the same jurisdiction which had been exercised by the Sadr Díwání and Nizámat Adálat of the North-Western Provinces. It had an appellate jurisdiction, and a jurisdiction on revision, and so on, similar to the late Sadr Court; and in addition it had an extraordinary original jurisdiction. By Section 2 of the Bill it was intended to bring that Court within the scope of Schedule B. A similar provision had been made with reference to the High Court of Calcutta, by Act XX of 1862.

The next Section to which he would refer was Section 4, which had reference to Schedule A of the Stamp Act, and referred, not to proceedings before the Courts, but to private proceedings between parties. It was not intended in the first instance to amend any part of that Schedule, because that Schedule was considered to require much more consideration than could be given to it at present. It was therefore intended to postpone the amendment of that Schedule to the next year. There was no mention in that Schedule of an important class of documents which affected a very large number of people in Calcutta. It was well known that there were many Joint Stock Companies in this town, and when any shareholder in one of those Companies wished to vote by proxy, he was bound to provide his proxy with a letter or power of attorney, the stamp-duty on which was of two kinds—a general letter of attorney was subject to a stamp-duty of four rupees, and a special letter of attorney, when the property was below five hundred rupees in value, was subject to a stamp-duty of one rupee. In the majority of instances, shareholders voting by proxy had pro-

perty in Joint Stock Companies in excess of five hundred rupees. It therefore followed that, when any shareholder wished a person to vote for him by proxy, he must provide him with authority to do so on a stamp paper of four rupees. This was the case to such an extent in Calcutta, that very few proxies were stamped at all; the law was evaded, and any thing done by authority of those proxies was not binding on the Companies. It seemed quite clear that, with such a heavy duty, the Act would be evaded.. He believed that, in England, the duty on such proxies was six pence when given to vote at any one meeting. He therefore proposed to follow the English law, and provide a duty of four annas on every proxy to vote at any one meeting. That was the only amendment of Schedule A which it was proposed to make in this Bill.

He would now refer to the amendments proposed in Schedule B. On looking at Section 5 of the Bill, it would be found that the whole of that Schedule had been repealed; but the object of that was not actually to alter the whole Schedule, but only to bring all the provisions of the Schedule into one place. While there were a few verbal amendments in articles 1 to 9, there was no material alteration. The Article to which he would therefore first draw the attention of the Council was the tenth. That Article, as it at present stood in the Stamp Act, contained a special rule for Bengal, which declared that petitions of appeal to a Board of Revenue or other Chief Revenue authority, or any other petitions or applications to such Board or authority, or petitions or applications to a Criminal Court or Revenue officer, should be on a stamp-paper of the nature and amount therein described. But there seemed to be no reason why that rule should not be made general in all India. If there was any reason why those petitions and applications should be subject to stamp-duty in Bengal, he thought the same reason would apply to similar petitions and applications in the other Presidencies. If it were not so, the persons representing those Presidencies should show why it was not so: but he believed that the Hon'ble Messrs. Taylor and Shaw Stewart would support him in the assertion, that there was no reason why the same rule should not be applied to those Presidencies, and he believed there was no reason why it should not be. A great many petitions and applications, not in the nature of appeals, were made vexatiously and for trumpery matters: such applications ookt up the time of high by, and there was no reason why the applicants should not be made to pay for such applications. There might also be some desire to suppress the number of those petitions. It was not only proposed that that rule should not be special for Bengal, but that it should also be extended to certain Courts and officers to whom it did not now extend. The first two clauses of the Article ap-

plied only to the Board of Revenue or other chief Revenue authority: but there were many officers to whom such petitions and applications were made, who were not only revenue but executive authorities, for instance, Commissioners of Divisions, and Chief Commissioners of Provinces. The Governments of the Panjáb, the Central Provinces and Oudh, had represented that petitions and applications made to those authorities should be made on stamp-paper, the object being to suppress petitions of a petty nature, or at any rate to make people instituting such proceedings pay for the trouble they gave to those officers. There was another addition to the Article, but that amendment he had already explained fully: it was that by which petitions containing any complaints of an offence in a Criminal Court should be instituted on a stamp of one rupee. The law which obtained in reference to those petitions formerly, and up to the year 1860, was this:—a petition of that nature was liable to an institution-stamp of eight annas, and the complainant was also liable to pay certain sums of money for the service of the summons on the accused, and for the attendance of witnesses. Therefore, in fact, although the institution-stamp was only eight annas, yet in reality the complainant paid a much larger sum, probably nearly two rupees. But when the Code of Criminal Procedure was passed, the fees for summonses to the accused and witnesses were done away with, and it resulted that the person who had formerly to pay down a certain institution-fee of nearly two rupees, had nothing to pay from 1860 and 1861. He had shown, on the last occasion, the disastrous results of that amendment of the law as it existed prior to 1860, and substantially what he now proposed was to re-enact the law which prevailed in Bengal from 1795 to the time abovementioned.

The next point to which he would refer was that which was to be found in the scale under Article 10 of the present law. He had already pointed out that that scale was defective in two particulars; first, inasmuch as it jumped too largely from sum to sum; and secondly, inasmuch as the scale of stamp-duty was founded on no sort of principle: for instance, in a suit valued at 801 rupees, the same stamp was levied as in a suit for 1,600 rupees, and so on throughout the scale. He proposed to amend that defect, and to enact that no suit for sums less than ten rupees should be instituted on a less stamp-duty than one rupee. From ten rupees to a hundred rupees, the scale would jump by five rupees at a time; from a hundred rupees to one thousand rupees, by ten rupees at a time, and from one thousand and upwards, at the rate of a hundred rupees at a time. In this way the first serious defect in the scale would be amended. He would have proposed that, whatever the amount, the stamp-duty should be levied on that amount, but for the difficulty and inconvenience that the stamp-office would experience in providing stamps

for fractional amounts. But now the scale would jump only to the very limited extent that was absolutely necessary. The principle on which the stamp-duty was at present levied on suits according to their valuation was no principle at all. In suits for ten rupees to fifteen rupees, according to the present scale, the duty was as high as ten per cent. and as low as six per cent.; in suits from twenty rupees to thirty-five rupees, it varied from eleven to six per cent; in suits from forty rupees to sixty-five rupees, it varied from twelve to six per cent.; from seventy rupees to one hundred and sixty rupees, from eleven to five per cent.; and from one hundred and sixty rupees to three hundred and twenty rupees, from ten to five per cent. It would therefore be seen that the present scale was founded on no sort of principle; a suit, for instance, of sixty rupees was assessed at about six per cent., and a suit for sixty-five rupees at about twelve per cent. In the proposed scale, up to three hundred and twenty rupees, there was no increase but only an equalization of the scale. He therefore proposed a uniform duty up to a certain point; that was, up to one thousand rupees the duty would be ten per cent., and in suits over one thousand rupees, the duty would gradually decrease. He should mention that, ten per cent. on the value of a suit of one thousand rupees was two and a half per cent. less than what was levied as an institution-fee in the Presidency Small Cause Courts. By these amendments he hoped to equalize the scale, and get an excess revenue of about twenty-seven lákhs.

The next point was the mode in which the value of land, whether paying revenue to Government, or whether revenue-free, was arrived at. The present rule was this:—In lands that were permanently settled, you found the assessment annually paid to Government, and you multiplied that sum by three; in lands temporarily settled and lands situated in Bombay and in Madras, you found the annual assessment, and that was taken to be the value of the suit. In revenue-free land, you were supposed to find the annual net profit, and to multiply it by eighteen, and that represented the value of the suit. The object ever sought to be obtained was that all suits should be assessed alike, and he found, in note *e* of the present stamp-law, that suits for property other than revenue-paying or revenue-free land were valued at the estimated selling-price *i. e.*, the market-value of the property in dispute. In 1829 an attempt was made to find what was the estimated selling-price or market-value of revenue-paying or revenue-free land, and it was found, from sales of land for arrears of revenue, that in the case of permanently settled estates, the selling price or value was three times, and in the case of land temporarily settled once, the amount of the annual assessment. He proposed to assess all suits at the market-value of the land, whether paying revenue to Government or free. But if the market-value were alone laid

down as the measure of assessment for the purposes of stamp-duty, there would at once arise the difficulty of the Court arriving at that value, besides harassment to the suitor. He thought, therefore, that there should be some rule for the guidance of the Courts, and that the burden of disproof should lie on the suitors. Therefore, *primâ facie*, the market-value was to be the value of the assessment, with this proviso, that eight or ten times the amount of the annual assessment should be taken to be the value of revenue paying land until the contrary was proved. As to lands revenue-free, he would require the annual profits to be taken as the value of the property in suit, and would multiply that sum by twenty (eighteen was too low) and take that to be the value until the contrary was proved. This would throw the burden of proof on the person who maintained that the property was of less value. He could find no other way of getting over the difficulty. The reason why he had taken eight or ten times the amount of revenue was this, that he found that to be the average of the market-value of such land throughout the empire. From returns he had received from the Panjáb and other places, he found that the value of land in sales for arrears of revenue varied considerably. In Bengal it fell as low as one year's purchase; and it was as high as thirty years' purchase: in the Panjáb it was as high as forty-seven; in Madras it was fourteen; in the North-Western Provinces it was as high as sixty-six, and in Bombay it was sixteen. The average was about eight times the value of the annual assessment. He therefore proposed that, in permanently settled estates, ten times the assessment should be taken to be the value of the land in suit, and in lands temporarily settled, eight times, until the contrary were proved.

In other descriptions of suits, as in suits for damages or compensation, he would take the market or money value at whatever sum the complainant might estimate it; and in certain other cases, where no value could be placed at all, as, for instance, in suits for restitution of conjugal rights, and other sorts of suits which were becoming very frequent in the Panjáb, he had placed the stamp-duty at a fixed sum of thirty-two rupees. If any person should dispute the computed or market-value used, he had provided a procedure by which the Courts should ascertain the value: they might employ a Civil Amín or other proper person to ascertain the market-value.

The next was a special provision, which enacted that, in suits for mesne profits, if the profits decreed were in excess of the profits claimed, the decree should not be executed until the difference between the stamp-duty actually paid, and the stamp-duty which would have been payable had the suit comprised the whole of the profits so decreed, should have been paid to the proper officer. The meaning was this:—when a person sued

for mesne profits, the certainty was that he had been out of possession for some time, and was not in a position to ascertain the amount of profits that he was entitled to, or he might have ascertained the exact amount of profits, but not stated it correctly in his plaint. For instance, a man sued for mesne profits, estimating them at one thousand rupees; then, in the execution of the decree, the profits were found to be two thousand rupees. In such a case a man would recover two thousand rupees on a stamp-duty of one thousand rupees. The law would therefore provide that, when the amount of mesne profits should be found to exceed the amount sued for, the litigant should be required to pay the difference of stamp-duty.

The next provision to which he would refer was note *c*. That, to a certain extent, was a repetition of note *f* of article 11 of the present law. The meaning of the note was this:—When a person sued, suppose, on two bonds, one of which was valued at one thousand rupees, and the other at five hundred rupees, amounting altogether to one thousand five hundred rupees, he would sue on a stamp-duty calculated on the aggregate amount of one thousand five hundred rupees. The Court of first instance might find that the suit was barred by the Statute of limitations, and dismiss the suit. The plaintiff appealed, and the appellate Court found that the Statute of limitations barred the bond for one thousand rupees, but not the bond for five hundred rupees, and remanded the case for investigation on the merits as to the bond for five hundred rupees. The law at present said that, when an appellate Court remanded a case to be tried on its merits, then the Court should direct the full amount of stamp-duty paid on the petition of appeal to be remitted; but the object clearly was only to remit that part of the duty which referred to the part of the case remanded. Therefore, in the case he had put, the stamp-duty on five hundred rupees should be remitted, but not the duty on the one thousand rupees, a final decision on which had been given; for, if it were otherwise, the litigant would obtain a decision in appeal on a suit for one thousand rupees without the payment of any stamp-duty at all. It was to meet that defect that the amendment in note *c* was proposed.

Note *d* was a new provision, and it also was necessitated by what was found to be a means of evading the stamp-duty. He would put the same case as before:—suppose a plaintiff sued for two sums of one thousand rupees and five hundred rupees? the lower Court gave a decree for one thousand rupees, but dismissed that portion of the suit which related to five hundred rupees. The plaintiff appealed, and then the respondent came in, and, under Section 348 of the Code of Civil Procedure, objected not only to the judgment of the lower Court as to the five hundred rupees, but to the judgment as to the whole

one thousand five hundred rupees : the appellate Court was bound to hear him, and might entirely set aside the judgment of the lower Court, and give the respondent a decree for the whole sum of one thousand five hundred rupees. In such a case, it seemed improper that a person should be allowed to raise an issue involving a sum of one thousand five hundred rupees on a stamp-duty which only covered the five hundred rupees regarding which the plaintiff had appealed.

There was only one other provision to which he wished to refer, and that was in reference to suits under Act X of 1859. In order to equalize the stamp-duty on suits instituted under that Act, with other suits relating to land, it was only necessary, as he had said before, to repeal note *g* of the present law. He therefore proposed to repeal it altogether.

The Hon'ble MR. MAINE said, before His Excellency put the question, he thought he might venture to express, on the part of the Executive Government, their sense of the patience and sagacity with which the Committee consisting of Mr. Justice L. Jackson, his Hon'ble friend Mr. Hobhouse, and Mr. Prinsep, had sifted the details of a most perplexed subject, and had not only produced a financially favourable result, but had recommended a scale of stamps in itself more equitable and consistent than that which it was proposed to supersede. MR. MAINE believed he might add, in the name of that Council, their appreciation of the ability with which Mr. Hobhouse had argued in favour of his proposals. MR. MAINE did not concur in all the arguments which had been employed, but it so happened that, when his Hon'ble friend had used an argument in which MR. MAINE did not concur, he had coupled it with another in which MR. MAINE entirely agreed; and on the whole MR. MAINE was entirely in favour of Mr. Hobhouse's Bill. In the next place, MR. MAINE, after giving their due to the Committee, wished to reply by anticipation to certain objections of a general character which might be urged against their recommendations. His Excellency the President would remember that, when it was originally proposed that this Committee should be formed, a distinguished officer of Government had, without expressing any opinion as to the existing scale of duties, stated that he had a general objection to judicial taxation, and requested to be relieved from service on the Committee. The same general objection had been repeated in some papers which had fallen under MR. MAINE's observation, and in particular in a letter from the Bombay Chamber of Commerce. MR. MAINE believed that there was a complete answer to that objection, and it would be well that it should be stated. No doubt all generalities were every day becoming more and more

formidable in India; but there was a special reason for distrusting all general propositions as to taxes on judicial proceedings after the facts and arguments adduced by his Hon'ble friend Mr. Hobhouse had received proper attention. If there were one general proposition which at first sight seemed clearer than another, in connection with this subject, it was that it was improper to require a stamp on applications to the Criminal Courts for the redress of wrong. MR. MAINE felt sure that, if the question had been submitted five or six years ago to him, as it was to the present Chief Justice of Bengal, whether certain petitions to the Criminal Courts should be taxed, he should have agreed with Sir Barnes Peacock. Yet, what had been the practical result of this relaxation of the stamp-law? They had it on irrefragable authority that the result had been to produce seventy-five per cent. of demonstrably false accusations—accusations, the greater number of which were not persevered in, the accuser having gained his point by the fact of accusing, the remainder being rejected by the Courts. This astounding fact might well make them cautious as to minor and therefore less hazardous generalities on the subject of judicial taxes in India. But it still remained to refute the more sweeping generalisation that judicial taxes in all countries were mischievous and improper. MR. MAINE was convinced that his Right Hon'ble friend Mr. Massey would concur with him in saying that the opinion against judicial taxation was extremely modern. For centuries on centuries, there had seemed to be nothing more simple or natural than that the parties to a dispute should remunerate the authority by whom their differences were arranged. No doubt, in modern Europe the mistake had been made of allowing judicial fees to go into the pocket of the Judge himself, and not into the exchequer of the State that paid him. This had led, in France, before the Revolution, by a perfectly logical association, to the sale of judicial offices; and in England, though it had always been illegal to traffic in such offices, the same result had practically been obtained by the creation of sinecures which were conferred on relations of the Judge. Against such scandals and abuses Jeremy Bentham, now not far short of a hundred years ago, protested with all the vehemence of which he was capable, and MR. MAINE ventured to say that the opinion against judicial taxation was entirely produced by Jeremy Bentham, and was not older. It was true, as Mr. Hobhouse had observed, that Jeremy Bentham's opinions in this respect had not been practically carried out at home, and that large amounts were still levied in the form of judicial taxes, in aid of the payments which the State made to its judicial officers. But the truth was, that Bentham's name was now so great in England, that even those views of his which had never been acted upon had obtained currency and importance in the shape of commonplaces. It was, however, an urgent matter

to enquire what were the reasons of Bentham for denouncing judicial taxation as mischievous. Not certainly any vague notion, couched in figurative language, that you must not tax justice. Bentham's idea was that all litigation, or all but a very little, was entirely the fault of Government, and therefore he naturally objected that Government, which caused litigation, should profit by it. Bentham believed that litigation was owing to the complexity of law, and that this litigation might be almost entirely removed by legislation adapted to true principles. He thought that litigation, and therefore the expense of litigation, might be reduced to a minimum, if it were not for the blindness, or the stupidity, or the cupidity of legislatures in not simplifying the laws. MR. MAINE would quote the panacea expresslyprescribed by Bentham for the all but complete suppression of fees and costs. "An all-comprehensive code of substantive law, having for its end in view the greatest happiness of the greatest number, each part of it present to the minds of all persons on whom conformity to its enactments, its attainment of its end, depends, and an all-comprehensive code of adjective law, otherwise called a code of procedure, having for its end the giving, to the utmost possible amount, execution and effect to the enactments of the substantive code." The passage was quoted from the *Principles of Judicial Procedure* as a statement of Bentham's expedient for preventing judicial taxation, and accordingly he argued with perfect logic, that if costs and fees were inevitable, it was the Government and not the litigant that ought to pay them.

Now, without entering into the question of the truth of these views, had they any application whatever to India? The simple fact was that the people of India objected to having their laws and institutions simplified, and resented such interference as a breach of the conditions on which the country was governed. There was an excellent illustration in the Indian Succession Act, the only chapter of that code of substantive law contemplated by Bentham, which was at present in force in India. As it had been passed by this Council in almost the same form as it had been received from the Indian Law Commissioners, MR. MAINE might describe it without vanity as a most excellent and equitable piece of legislation. But the first admission that had to be made by the Indian Law Commissioners, by the Home Government and by themselves, was that it could not possibly be extended to the intestate successions of Hindús, Muhammadans and Buddhists, or in other words, to the great mass of the population. They were told that it was as much as the empire was worth to impose an uniform law of intestate succession on the country, and so inveterate had become the conviction that each sect of the country was entitled to its own law of succession, that MR. MAINE would be surprised if, when the measure for extending the Succes-

sion Act to the Straits' Settlement came on for discussion, it was not contended that every division of that heterogeneous community was entitled to its own law, and that even the Sandwich Islander had a right to have his law of inheritance administered by the Courts. Now, it had been calculated that nine-tenths of the heavier litigation of England, that which came into the Court of Chancery, was occasioned by the English law of succession. But the Hindú law on the subject was at least as complex as the English, and it was mixed up with and dependent on the system of adoption, and the system of joint occupation of property during life. This was then a case in which the strong feeling of the people had compelled the legislature to maintain a most complex system of law, and one most fruitful of litigation. Another most striking illustration of the Native feeling on the subject of simplifying had been furnished by some of the answers to a circular recently prepared and issued from the Legislative Department. This circular referred to the formalities of executing wills; it did not propose that the actual power of making a will should be either extended or diminished; but it suggested that certain securities against fraud, such as signature and attestation, should accompany the execution of every will. From the more enlightened parts of India, the answers were favourable, but from those sections of the country which required the most careful watching, what was the reply? It was remarkable that the Muhammadans of the North-Western Provinces made, in the most express language, every admission which Bentham would have required. They allowed that every sort of fraud resulted from the system of oral death-bed wills; but they urged that it was an inference from the words of their Prophet, that a man up to the last moment of his life might bequeath by word of mouth whatever property he might lawfully dispose of, and hence they resented as an outrage on their religious feelings the imposition of the formalities required by the Succession Act. The Hindús followed suit; they admitted that wills, oral or written, were no part of their religious system; but they argued that they ought not to be placed in a worse position than the Muhammadans, and that they were entitled to as many prejudices as any Muhammadan. Hence they, too, objected to the simplification of the law. The truth appeared to be that the people of this country were not only wedded by custom and religious feeling to complex systems of law, but prided themselves on their usages in proportion to the complexity of those usages. If this were so, the foundation of Bentham's doctrine collapsed, and the doctrine itself had no application to India. The legislature was estopped, by the conditions of our tenure of the country, from so simplifying the law as to render judicial taxation mischievous. Mr. Maine did not mean to imply that indefinite judicial taxation was legitimate in this country. All he argued was,

that it was governed by the same principles as the levying of any other tax, and not by any special consideration of the mischievousness of judicial taxation.

The Hon'ble MR. TAYLOR said he would not occupy the time of the Council with remarks upon the general scope or principle of the Bill. The question whether justice ought or ought not to be taxed—whether in short the public in this country might fairly be made to pay for the luxury of litigation—had already been dealt with by abler hands than his. He would content himself with the expression of his full concurrence in the arguments used by the Hon'ble Mover of the Bill, who had shown, in clear and forcible terms, both the justice and expediency of the proposed measure, not only from the point of view of checking petty and vexatious litigation, but also as a means of providing, in some degree for the higher remuneration of the subordinate Judges and ministerial officers of the Courts throughout the country.

The few observations which he should make to the Council had special reference to one or two points in regard to which his Hon'ble friend had done him the honour to refer to him as an authority. Now, although he had no wish to escape the responsibility properly attaching to him as the only representative in the Council of the Presidency of Madras, still he was not quite prepared to go so far as his Hon'ble friend, who seemed disposed to contend that his (MR. TAYLOR'S) individual opinion on any question discussed in this Council must be held to be the opinion of the Government he had the honour to represent. He could not certainly accept this position in reference to a question of such importance as the imposition of a stamp-duty upon all applications or complaints, and petitions of appeal, to the Revenue authorities, the Magistrates and lower Criminal Courts—a question in regard to which very material differences of opinion had always existed and still did exist—to which the strongest objections were urged, both by the Government of Madras and of Bombay, when the stamp-law was last discussed, and upon which, so far as he was aware, those Governments had not been consulted on the present occasion.

Individually, as he had said, he was in favour of the measure introduced by his Hon'ble friend, and he was unable to advance any valid reason why, if it was good for Bengal and the North-West Provinces, it should not be made general for all India. As regarded more especially a stamp-duty on complaints before Magistrates, he found it impossible to resist the argument deduced from the figures quoted by Mr. Hobhouse from the Police-returns, which showed that seventy-five per cent. of the persons charged with the most common offences were either not brought to trial at all, or acquitted. Speaking from his past experience as a Magistrate and Collector, he believed that the effect

of the proposed measure would be to check the very numerous complaints of a petty and vexatious nature with which the District officers were often swamped; and, guarded in the way provided by the Bill as introduced, *viz.*, by giving a discretionary power to the Magistrate to remit the stamp-duty in cases of real and just complaint of poverty, and for other reasons, he had no fear of its acting injuriously.

The second point to which he desired to allude had been discussed in the part of his Hon'ble friend's opening speech which related to the subject of determining the valuation, for the purpose of assessing the stamp-duty in suits, of lands paying revenue to Government. In the course of his remarks on the inaccuracy of the system in force under the present law, for determining the actual value of the land, his Hon'ble friend had drawn an illustration from the effect produced by the *Inám* settlement in Madras in respect of lands which were formerly rent or revenue free. Mr. Hobhouse very accurately described the loss of stamp-revenue which was involved whenever such lands became the subject of suits, in consequence of their conversion from revenue-free to revenue-paying lands. The same land which before paid five hundred rupees stamp-duty, now that it had been permanently settled on a very light assessment paid no more than sixteen rupees. So far his Hon'ble friend was quite correct, and he went with him entirely in supporting the principle of assessing these lands for the purposes of the duty at their market-value, so far as that value could be approximately determined by the means proposed.

But there was one expression of his Hon'ble friend to which he must be permitted to take exception. On more than one occasion he spoke of "what are called *Inám* lands in Madras" being *resumed*. He said "the moment those lands are *resumed*; on the *resumption* of that land," and so forth—as if this phrase described in accurate terms the process to which the *Inám* tenures of that Presidency had been subjected. Now as the case was far otherwise, and as the phrase to which he had objected was calculated to recall to many minds,—though such he felt sure was not in the remotest degree the intention of his Hon'ble friend,—a vision of the old resumption-laws which created so much dissatisfaction and ill-feeling on this side of India, and with which the *Inám* settlement of Madras had nothing whatever in common, he desired to describe in more accurate terms what the effect of that settlement had been.

The pledge which was given by Lord Stanley from his place in Parliament, when Secretary of State for India during the Session, if he remembered rightly, of 1858, in respect to the working of the Madras Commission, had been honestly and thoroughly redeemed. The object of the enquiry was, he said,

to confirm and not to disturb titles. It was not to resume or to deprive the holders of their lands, but to give security to landed property, to improve the positon of the *Inámdárs* throughout the Presidency, to enhance the value of their tenures which had hitherto been precarious and subject to vexatious restrictions as regarded succession and otherwise.

That object had been fully attained; an indefeasible freehold title had been given to every *Inámdár*, in return for which he paid to the State an annual quit-rent varying from one-eighth to half of the full assessment of his holding, according to the value of the previous reversionary interest of the Government in each *Inám*.

These terms were even more liberal than those which had been conceded to the *Inámdárs* of Bombay; and on referring to the printed volume of debates in the Imperial Legislative Council in 1861, he found an Hon'ble Member—the then Member for Bengal, Mr. Seton-Karr—thus expressing himself in reference to the measure for Bombay which was then under discussion:—

"There never was a case in which the legal maxim could be of greater truth or more instant application *Interest reipublicæ ut sit finis litium*. I can only judge here from my experience of Native feeling in Bengal. With what avidity and alacrity would such a summary settlement as is now proposed have been accepted by the Natives of Bengal some twenty years ago! It was entirely owing to the want of such a provision that we, in Bengal, had incurred considerable expenditure, introduced complications into claims for real property, engendered irritation, and confirmed discontent. No Native connected with landed interest feels any grievance comparable to the grievance consequent on the resumption laws."

After this, the Hon'ble Member would not, he thought, be surprised that he should demur to the application of so odious a term to the proceedings of the *Inám* Commission in Madras.

Before leaving this subject it might be well to show to the Council what would be the effect of the proposed alteration of the stamp-law as regarded the valuation of *Inám* or revenue-free lands. Continuing the illustration of his Hon'ble friend, suppose that the full annual assessment of an *Inámdár's* estate, as determined by survey or otherwise, were one thousand rupees? then, instead of multiplying that sum by eight, as in the case of ordinary *ryotwári* land, you would multiply the quit-rent, which was a permanent charge, by ten, and the stamp-duty, which, on land fully assessed at one thousand rupees, would have been four hundred and fifty rupees, would, in the case of *Inám* land, be rupees 300, 175 or 115, according as the rate of quit-rent were one-half, one-fourth or one-eighth of the full assessment. The lowest payment would be rupees one hundred and fifteen, instead of only sixteen as at present.

There was only one other point to which he desired to allude, and that was the proposed alteration of that provision of the present law under which a person was privileged to sue, for arrears of rent in the revenue Courts, on a lower stamp-duty than in the ordinary Courts. He had no experience of the working of Act X of 1859, but *primâ facie* he agreed with his Hon'ble friend that there ought to be no such distinction. As regarded Madras, under the old Regulation for the recovery of rent, the Collector had only a summary jurisdiction, and not a regular jurisdiction: the Rent Recovery Act (No. VIII of 1865) recently passed by the Madras Council, had not altered the character of the law in this respect. A summary suit under that Act must be brought within thirty days from the date of cause of action, and process must be taken out within one year from the time the rent became due. It was true that suits brought before a Collector under the Act were at present exempt from stamp-duty, but MR. TAYLOR supposed that, under the new law, the only charge to which summary suitors would be liable would be the general stamp-duty of eight annas on ordinary applications, and to this he saw no objection.

The Right Hon'ble MR. MASSEY entirely concurred with the Hon'ble Mr. Maine in the sense which was entertained of the care and ability with which this somewhat difficult subject had been investigated and dealt with by the Hon'ble Mr. Hobhouse. MR. MASSEY need hardly add that, as this Bill originated in the Report of a Committee specially appointed by the Government of India to consider the stamp-laws, he concurred in the principle on which the Bill was based: he thought that some very important principles were enunciated in the Bill, and he hoped they would not be seriously modified by the Committee to which it would be referred. The Hon'ble Mr. Maine had effectively disposed; by anticipation, of an argument not likely to be raised in this country, that the imposition of stamp-duties on legal proceeding was indefensible. That idea had originated in the writings of Bentham, and had acquired authority from the great reputation of that theoretic statesman. But as far as he, MR. MASSEY, was aware, the theory had never been practically adopted in England, or any other country with which he was acquainted. Indeed, so far from recognising the privilege of immunity from judicial taxation, in the most recent instance of the organization of a judicial system—the establishment of County Courts about twenty years ago,—they were constituted on the express principle of being made self-supporting, and the suitors were required to pay fees which went directly to the remuneration of the Judges of those Courts, and to defray the Court charges. Subsequently, however, on considerations of financial convenience, that arrangement was converted into a system of paying the Judges and officers of those Courts in the same manner as

in the other courts, and the fees, instead of going directly to the Judges, were paid over to the public treasury. The Council were not therefore called on to vindicate the policy of levying stamp duties on judicial proceedings; and when he considered the peculiar circumstances of this country, any objection such as had been alluded to, if it had any foundation in the practice or principles of European countries, would not be applicable here. He learned from the Hon'ble Mr. Hobhouse that litigation was resorted to in this country as an excitement and pastime, and too frequently from motives of a more objectionable character. When the machinery of those expensive establishments was put in motion to gratify the litigious disposition of the people, or still worse, to administer to malignity or private malice, MR. MASSEY thought that a tax should be imposed to repress such litigation and check the desire to resort to the Courts for any such purpose.

The Bill would, no doubt, be referred to a Select Committee for consideration and report. The scale of duty on plaints and petitions of appeal which was laid down in the Bill was, as he was at present advised, free from objection, but as that scale would probably undergo careful scrutiny at the hands of the Committee, he should desire to reserve his opinion on the details until they had examined the subject more minutely. But this he might venture to observe, without presuming to restrict the discretion of the Committee, that this Bill would go before them under different circumstances from other measures. A measure which had originated in a public office, or with an individual Member of the Council, might justly be subjected to careful scrutiny; but when a measure was founded, as this was, on a Report by a Committee specially appointed by the Government of India to consider the subject, and had been so carefully prepared, he thought that any Committee of this Council would feel that their labours had been greatly lightened, and it would therefore not be necessary for them to examine the Bill with the same minuteness and critical accuracy as other Bills. He might add that, for financial reasons, it was obviously desirable that the Bill should pass into law without unnecessary delay.

He thought the Hon'ble Mr. Hobhouse had exercised a wise discretion in introducing into the Bill the provision of the English law regarding proxies, and reducing the stamp to four annas. It was only a few days ago that he had received, from a body of respectable gentlemen, a remonstrance on the subject of the stamp-duty required under the present law for proxies, which restricted considerably the privilege of voting at meetings of Joint Stock Companies. As the subject was one of urgent importance, he thought the Council should deal with it at once, although it was not connected with the subject of the bulk of the Bill. The present high duty on proxies was a grievous oppression, which could

never have been intended by the legislature, and which ought to be remedied as soon as possible. Therefore, with regard to that part of the Bill, he, speaking as the Member of Council more particularly charged with the protection of the revenue, wished to state his entire agreement to the reduction to which he had referred.

He entirely concurred in the principle of the Bill, but when the Bill was referred to a Select Committee, he would be glad to hear the opinions of the Members on the scale of stamp-duty proposed for the institution of suits.

The Hon'ble MR. BRANDRETH concurred with the Hon'ble Mr. Hobhouse in the greater part of his observations. MR. BRANDRETH thought that the increase in the whole was exceedingly moderate. He entirely agreed that suits under Act X of 1859 should be subject to the same stamp-duty as other suits, and he also agreed as to the necessity of imposing some stamp-duty on petitions to Criminal Courts in regard to certain offences. There were several points of detail on which he had opinions, but he would reserve the discussion of them, as he hoped his Hon'ble friend would put his name on the Committee on the Bill.

The Hon'ble MR. SHAW STEWART would make a very few remarks on the proposal for levying stamp-duties in criminal cases. The object of doing so was stated to be the suppression of false and vexatious complaints. If he thought that the levying of a stamp of one rupee would have the effect of preventing the preferring of complaints, he should be inclined to vote against it even as regarded Bengal; but as he believed that it would not have that effect, he saw no objection whatever to the institution of such a duty. In this country he thought, from his general experience, that the unrestricted power which people had of bringing those petty complaints acted as a sort of safety-valve, and deterred them from redressing their own grievances in a more arbitrary and summary manner. He should therefore object to any proposal for suppressing the preferment of those complaints, but he was of opinion that the contemplated stamp-duty of one rupee would not have that effect. On the contrary, he thought that a person would be very glad to pay a small duty, feeling that thereupon he had a right to make the complaint and to be heard. But as regarded Bombay, where criminal complaints had always been exempted from duty, he saw far more objection to introducing it there now, and he believed that the feeling of all the local Magistrates and other officers would be opposed to the introduction of such stamp-duties. Besides, he did not agree with the Hon'ble Mr. Maine as to the inapplicability to this country of the arguments against the imposition of a tax on judicial proceedings, but, for special reasons,

he thought the Council ought to be very careful in taking any steps calculated to prevent Natives from bringing their complaints, however petty, before the criminal tribunals.

The Hon'ble MR. SKINNER agreed thoroughly in the general principles on which the Bill was framed, and it seemed to him that, as a measure of taxation, it was eminently adapted to the circumstances of the country. There was one point on which he could not so readily admit the conclusions of the Hon'ble Mr. Hobhouse, and that was as to the provisions regarding criminal and revenue proceedings. MR. SKINNER did not deny that Revenue Courts could not be used for suits of a vexatious nature; but that, in regard to them, justice was not exposed, except in a very minor degree, to abuses of that sort. The effect of the Bill, as far as concerned the checking of vexatious litigation, would be rather the reverse of what was desired, for, as his Hon'ble friend was very well aware, it was not the institution of suits for arrears of revenue, but the opposition to them, that was vexatious. The more obstacles you put on the institution of those suits, the more encouragement you gave to opposing such suits. He trusted, therefore, that the Hon'ble Mr. Hobhouse would re-consider the grounds on which he based his proposal as far as regarded the law for the recovery of rent.

The Hon'ble MR. HOBHOUSE had few remarks to make in reply. As far as he could make out, the Bill generally had the approval of the whole Council, and in fact there were very few tangible objections to the general principles of the Bill. In the matter of the general policy of levying a stamp-duty on suits before the Courts, he had simply stated what was his own experience and what he had gathered to be the law as founded on the experience of the legislators of this country; and the Right Hon'ble Mr. Massey and the Hon'ble Mr. Maine had confirmed on general principles that which he (MR. HOBHOUSE) had laid down as a principle gathered from his special experience of the laws and people of this country.

He might, perhaps, better mention in detail his views as to one or two points that had been referred to in the debate. He did not understand the Hon'ble Mr. Taylor to take a general objection of any kind, but he simply took special exception to the use of the term "resumption." MR. HOBHOUSE did not object to call the thing by any name that was preferred. He understood that what the Hon'ble Mr. Taylor meant was that the actual fixing of a quit-rent was not a resumption, but simply the paying of a quit-rent at the option of the *Inámdár*. That was very different from the law of resumption in this Presidency, and no doubt he, MR. HOBHOUSE, had confounded the two things. With

regard to the levy of a duty on summary proceedings, the case as he understood it was this. When a tenant was in arrears, the landlord, or the Government, which was the general landlord in the Madras Presidency, at once distrained the tenant's property, and if the tenant objected, he appealed to the Collector, and the Collector decided the matter as if it were a suit for arrears of rent of the current year. The effect of this Bill on such applications would be that they would require to be made on a stamp-duty of eight annas, because this law would be passed by the Imperial Government subsequently to the passing of the law of Madras.

The next objection was that taken by the Hon'ble Mr. Shaw Stewart. MR. HOBHOUSE thought, perhaps, that this was owing to his own fault; that perhaps he had not declared sufficiently clearly the two principles on which he would have a stamp-duty levied on complaints in the Criminal Courts. The object of that duty was, not only to repress vexatious and false complaints, but also to declare that persons who would bring petty charges in the Criminal Courts should pay a certain amount towards the expense of the machinery employed in the investigation of their complaints. That seemed to him to be the main principle on which a duty of that kind was justifiable. Perhaps Mr. Shaw Stewart had not considered the safeguards with which he (MR. HOBHOUSE) proposed to surround that duty. The Magistrate who heard the complaint might either remit the duty, or, if he should find that the complainant had made a just complaint, and if he should think that it was a case for reimbursement, then, under Section 44 of the Code of Criminal Procedure, the complainant would be reimbursed the amount of stamp-duty. Inasmuch as the object of the duty was to make people pay for using expensive machinery for petty matters, and as the duty would, under certain circumstances, be remitted or reimbursed to the complainant, he thought it could not but be a fair and beneficial tax.

In regard to the Hon'ble Mr. Skinner's observations, MR. HOBHOUSE was not quite sure that he had understood them. The object with which he proposed to get rid of the privilege now conferred on suitors in the revenue Courts, was simply to place them in the same position as other suitors, and he thought there was no good ground for the exemption which they now enjoyed. The provision applied only to certain parts of Bengal, not to the rest, and there was no reason now for continuing a provision given to certain suitors and which others did not possess.

The Motion was put and agreed to.

REGISTRATION OF BOOKS BILL.

The Hon'ble MR. HOBHOUSE asked leave to postpone the presentation of the Report of the Select Committee on the Bill to provide for the preservation of copies of books published in British India and for the registration of such publications.

Leave was granted.

JUDICIAL OFFICES' BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill to authorize the making of acting appointments to certain Judicial Offices, said that the Governor General of India in Council or the Local Government was empowered by various enactments to appoint the Judges of certain Courts; but it had been doubted by an eminent legal authority whether, in the absence of an express provision, this authorised the appointment of persons to act temporarily as Judges of such Courts. The object of the present Bill was to preclude such doubts by enacting that, in all such cases, the authority empowered to appoint a Judge should be deemed to have power to appoint an acting Judge.

The Hon'ble MR. HOBHOUSE asked whether the powers which the Local Governments possessed were not sufficient, without any Act or Regulation, to enable them to make the appointments contemplated by the Bill. He hardly thought the Bill was necessary.

The Hon'ble MR. MAINE said that he declined to give his own opinion, but as the doubts referred to had been expressed by a very high authority, he thought the Bill should be passed.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also applied to His Excellency the President to suspend the Rules for the Conduct of Business.

The PRESIDENT declared the Rules suspended.

The Hon'ble MR. MAINE then introduced the Bill and moved that it be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill be passed.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to exempt certain villages in the Bombay Presidency from the operation of the Regulations and Acts in force in that Presidency.—The Hon'ble Messrs. Maine and Hobhouse and the Mover.

On the Bill to amend the law relating to Stamp-duties.—The Hon'ble Mr. Maine, the Right Hon'ble Mr. Massey, the Hon'ble Messrs. Riddell, Brandreth, Shaw Stewart, Skinner and Cowie and the Mover.

The Council adjourned till the 5th March 1867.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 1st March 1867.

Office Supdt. Govt. Printing.—No. 180 L. C.—2-3-67.—180.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., Cap. 67.

The Council met at Government House on Tuesday, the 5th March 1867.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding*.
His Honour the Lieutenant-Governor of Bengal, K. C. S. I.
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Colonel Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble H. B. Riddell.
The Hon'ble E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble C. P. Hobhouse.
The Hon'ble J. Skinner.
The Hon'ble D. Cowie.

CUSTOMS DUTIES.

The Right Hon'ble MR. MASSEY moved for leave to introduce a Bill to amend the Law relating to Customs Duties. He said:—

"SIR, The statement which I have to make, in submitting to the Council the annual exposition of the revenue and expenditure of the country, comprises three separate accounts; namely, the ascertained balance of the year which has last expired; the estimate, partly founded on ascertained figures, of the current year; and the estimates with the provision of ways and means for the service of the year next succeeding the present year. The two latter estimates are always subject to disturbing agencies which do not affect the financial systems of other countries, or do not affect them in the like degree. The Government of India is charged with the general superintendence of five great subordinate Governments and three minor Administrations. It is no easy matter to exercise a political control over distant dependencies; and the diffi-

culty of such control is greatly increased when you have to supply and regulate the expenditure of these several States, varying as they do in the extent of their territory; in the races by which they are inhabited; in their social and commercial progress; and in every element which goes to constitute a fixed guide and criterion in determining, according to European ideas, the scale of expenditure suitable to each particular province. Accordingly, we are compelled to concede a wide, and, practically, an unlimited discretion in such matters to the Local Governments and Administrations, who are themselves forced to grant a large measure of license to distant ministerial officers. Thus we have not one Budget to deal with, but eight local Budgets complete in all their parts; and over neither one of these eight Budgets has the Supreme Government that control which is necessary for the purpose of finance. In addition to these difficulties, the financial administration of Her Majesty's Indian Empire is further involved by the separate treasury and separate accounts which are necessarily maintained by the Secretary of State, and over which the Indian Government has of course no control whatever. I make these observations for the purpose of explaining to the Council that they must not expect from my statements, or from the statement of any successor of mine under similar circumstances, anything more than an exhibition of Indian accounts which shall approximate to the truth. The very first statement which I have to make is a singular illustration of these remarks. In March last, a few weeks before the close of the financial year, I was advised that a deficit of £336,000 would represent the state of the accounts of that year. The actual result has been a surplus of £2,800,491. You will readily understand that a considerable portion of this astounding discrepancy is attributable to the precise method of accounting which has been adopted with so much benefit, in pursuance of the recent report of the Commissioners of Account and Audit. In fact, upwards of a million of the sum which I have named is disposed of in the adjustment of the registers of the Loan Department, and the general books of the Government of India, on the transfer of the management of the public debt to the Bank of Bengal. According to the new budget system, it is necessary that these debits and credits should be passed through the account of income and expenditure, but they represent no real transaction, and are strictly matters of account, terminating in a nominal credit to the Government of £1,028,189. But the remainder, or £1,772,000 is for the most part substantial, being made up in nearly equal proportions of short expenditure and the recovery of arrears of revenue. Thus, the Home expenditure turned out to be less by £350,000 than the estimate, and of the large amount of

£1,071,000 set down for stores, less than one-half has been spent, the saving being £566,000. Again £937,000 appear to the credit side from a payment of that amount of Railway traffic earnings in the Bombay Presidency, which had been retained in deposit in private Banks by the Railway Boards, contrary to the terms of the contract which require the prompt payment of the gross earnings into the civil treasuries, which payments have latterly been regularly made by the Railways in the two other Presidencies. This sum of £937,000, of which no account had been rendered when the regular estimate of last year was framed, has *pro tanto* reduced the charge for guaranteed interest, and accounts for the difference between the estimated cash-balance and the actual cash-balance at the close of last year.

With these explanations, I leave the accounts of 1865-66.

When I come to the regular-estimate for the current year I have a more difficult task, for I must present it to you in an incomplete form, in consequence of the change which has taken place in the official year. Soon after the financial statement had been made last year, the Government was desired by the late Secretary of State to make provision, if possible, for the submission of the Indian accounts at such a period as would enable the House of Commons to take them into consideration at an earlier period of the Session than was practicable under the then existing arrangement. The result was that we proposed to close the accounts of the year on the 31st of March instead of the 30th of April, and this arrangement was assented to by the Secretary of State. In comparing, therefore, the regular with the budget-estimate, the Council will bear in mind that I have to compare an estimate which was made for twelve months, with an estimate for a year which is to terminate in eleven months. It has been found extremely difficult to frame a sub-estimate of the proportion of outlying income and charge which are to be assigned to the missing month; and therefore it would be fallacious to rely upon the broken transactions of a mutilated year as representing accurately the financial results of a complete year. Notwithstanding the various depressing influences of the present year, it is satisfactory to state that, with four exceptions, the estimates of March last have been well maintained under every head. The Land revenue, although we have remitted £107,665, chiefly on account of Orissa, exceeds the estimate by £10,835, credit being taken for the month of April of which we are deprived. In Excise there is a small increase, and the Salt revenue for eleven months is better than the estimate for the year, owing partly to larger sales of Government stock in Bengal; but as these increased sales have not been attended with diminished imports, the flourishing state of this branch of the revenue

is an indication of the well-being of the mass of the people. On the other hand, the stagnation of trade has manifested itself in the falling off of the Customs returns to the amount of £135,868; while a deficiency in the Mint receipts of £140,200 is chiefly attributable to a falling off in the coinage of copper in consequence of the ample supplies of specie with which the treasuries are stored. But the short receipts occur mainly under Opium and Public Works. These two heads alone account for more than two millions of the deficit; but of these two millions I shall shew you that the greater part is nominal. The difference between the budget-estimate and the regular estimate of the Opium revenue, is £1,624,300. From this must be deducted £692,284 for the estimated amount of the sales in Bengal and the passes to be taken out in Bombay in the month of April, which are not included in consequence of the new arrangement in the present financial year. From the £932,016 which remain must be made a further reduction of £691,600 in respect of 5,320 chests, which, though included in the estimate, have not been brought forward in consequence of their being in excess of the number which the Government had announced for sale during the current year. Deducting these figures, therefore, namely, the sum of £692,284 for Opium, which will be realized in the first month of the next financial year, but which properly belongs to the last month of the current year; and a sum of £691,600 which we have failed to realize owing to the inadvertence which I have mentioned in the preparation of the budget-estimate; the balance, £220,416, represents the actual difference between the estimated proceeds and the sale of the Bengal drug. My estimate was Rupees 1,300 per chest; but the sales have yielded an average only of Rs. 1,248. To this difference of £220,416 must be added about £20,600 on account of a slight falling off in the passes taken out at Bombay.

The fourth and last head of revenue which is deficient is Miscellaneous Public Works, the receipts from which will be less than the estimate by about £520,000. But this amount also is nominal. Of £460,000 which we had expected to obtain from the sale of lands in the Island of Bombay we have realized nothing, the sales having been postponed to a more favourable season. This figure in fact represents a debt of which we have not received payment, as we expected, but for which we hold ample security. The remaining £60,000 is accounted for by the correction of an error in the budget-estimate of Bombay. The regular estimate is, therefore, really less than the budget-estimate by £135,868 under Customs; by £140,200 under Mint; and by £240,416 under Opium; in the whole by £516,484.

These figures are used only for the purpose of showing that the falling off in the revenue during the year has not been considerable; and that the failure, such as it is, has, with the single exception of the Mint, been confined to those sources which are necessarily affected by a season of commercial distress. The expenditure, on the other hand, shows an increase under every head. Guaranteed interest exceeds the estimate by £109,584, owing partly to the exclusion of the April accounts, and partly to the reduction of Railway receipts and increased expenditure caused by the interruption of the traffic on the Bengal and Bombay lines by the floods of last year. The Home charges are increased by £581,126 on account of the new transport ships and stores for India. It was intended that this service should have been provided for by a loan, and that one twenty-fifth part of the loan should be repaid annually. A Committee which was appointed to report on the whole subject, including the requisite financial arrangements, properly assumed in their report that this capital charge of above one million sterling should not be written off in full against the income of the years in which the money might be disbursed, but should be spread over twenty-five years, by annually debiting income with only one twenty-fifth part of the whole outlay.

Eventually, the money was provided from the cash-balance, instead of being borrowed. Had the original intention been adhered to, the annual charge for the vessels for the overland transport service would have been £43,041 instead of the large capital charge which has been spread over a period of only three years.

If to these charges we add £193,989 to the Army estimates; £66,902 for the purchase and repair of ships and placing additional vessels in commission in Bombay; and £50,000 to the Nízám in part payment of the balance due to His Highness under the treaty, on making up the accounts of the "Assigned Districts," the principal augmentations of charge will have been noticed.

The sum total of expenditure for the eleven months which comprise the current financial year will be £44,307,777. The receipts for the same period will be £41,912,530, the result being a deficit of £2,395,247.

This deficit as I have shown is produced in nearly equal portions by excess of charge and failure of receipt. We have realized £691,600 less than the estimate of the Opium sales, on account of 5,320 chests which we were precluded from bringing to the hammer, and we have lost £240,416 from deficiency of prices; being a total of £932,016. Add to this £276,068 for falling off in

Customs and Mint. On the other side, the expenditure as I have shown is, to about the same extent, in excess of the estimate. Large as the deficit may be—and it is impossible owing to the exceptional curtailment of the year to state the figure with more than an approximation to accuracy—it loses much of its formidable character when we consider that it is produced by causes in no degree affecting either the stability of our resources, or indicating a permanent augmentation of expenditure. And we derive further consolation from the state of our cash-balances. According to my estimate in March last, we should have entered upon the present year with a balance of £12,859,366. But our balance on the 1st of May was £13,771,625, being £912,259 better than the estimate. This addition, together with the loan of £600,000 raised in January, will increase the amount at which I stated the cash-balance for the close of the current year by £625,474. Notwithstanding the adverse state of the balance-sheet we shall close the year with £11,132,133 instead of £10,506,659, the estimate of last March.

The year about to close has been one of great adversity. Disaster and discredit almost unparalleled in their extent and duration have prostrated commercial enterprize, not only in this country but in England, where every interest, excepting always the irrepressible public revenue, has suffered more or less, and is suffering from similar causes. We may congratulate ourselves, however, that India, with one notable exception, has weathered the storm without suffering much more damage than has been caused by the temporary cessation of the steady progress she has been making for some years. Trade is stagnant and confidence has been checked; but the commercial honour of the country is untainted; and credit, though sharing in the general depression, is not I trust substantially or permanently impaired.

The exception to which I have referred is of course Bombay. But the ruin which has befallen Bombay is strictly exceptional and local. The crisis which has affected all commercial enterprize has precipitated her fall; but that fall was inevitable, though the surrounding atmosphere had been one of unclouded prosperity. Bombay, however, has suffered and has repented. She has great natural advantages, and is rapidly augmenting those advantages by means of the converging lines of railway which will convey a large share of the wealth and trade of India to her port. She still numbers among her merchants many men of ascertained position, men of honour, and men of business; and if bitter experience can ever be of any avail in teaching a practical lesson, the banking business and commercial enterprize of Bombay will for the future be something better than mere gambling speculations.

Sir, I have spoken of commercial depression, from which India has suffered in common with England and other parts of the world. But during the past year India has been afflicted with a calamity far more grievous than any form of commercial disaster. A whole province has been desolated by famine, and other districts have partially suffered by a similar visitation. I need not dwell upon a topic which has been uppermost in the public mind of this country for many months. I am almost ashamed to mention it in connection with balance-sheets and estimates; but as a matter of fact, I am bound to notice the famine as prominent among other causes which have had an unfavourable effect on the finances of the year.

I now proceed to lay before you the estimates for the year which is about to commence. But before I enter upon this statement, I must advert to a change which has been recently adopted in dealing with one of the most important and the most interesting branches of our expenditure. I mean that portion of the grant for Public Works which relates to what are stated in the accounts as agricultural improvements, but which are better known by the description of irrigation works. The progress of these undertakings has been hitherto retarded by various causes, some of which I took occasion to notice in my financial statement last year. One of them, the conflict of opinion as to the best mode of planning these vast and costly works, has been in a great measure removed by the able and comprehensive report of the Committee on the Ganges Canal, appointed by His Excellency the Viceroy in the early part of last year; and the conclusions arrived at by the majority of the experienced Engineers who framed that report have been adopted by the Government of India with the concurrence of the Secretary of State. If any doubt has hitherto existed as to the expediency of engaging in great and extensive schemes of irrigation, that doubt has been completely dispelled by the lamentable events of the last year. There can be no deliberation in dealing with Famine; and the issue forced upon the Government has been, not whether it shall engage in speculations which may yield an uncertain profit, but whether whole districts of the country shall be exposed to a periodical depopulation for want of those preventive measures which human power can command. Irrigation, Sir, in India, is the great question of the day, as the repeal of the Corn Laws and unrestricted commerce were the great questions in England in days gone by; but all that the repeal of the Corn Laws and Free Trade have done for the people of England, and much more than all, will be done for the people of India by works which will fertilize their fields, and place their means of subsistence beyond the reach of accidents, which indeed are not so much accidents as events of ordinary and almost regular recurrence.

Sir, I have said that this question should not be considered mainly as one of profit and loss. Assuredly it should be taken up on far higher grounds. Nay, even if it were certain that the twenty or thirty millions of money which from first to last will be required by these operations would yield no return, the State would still be bound by the highest sense of duty to undertake them. But, so far from irrigation schemes being unremunerative, the reverse is the admitted fact, and the Government have been blamed for the jealousy with which they have been supposed to exclude private Companies eager to enter upon a field of such profitable enterprize. At the same time, I am not sanguine in my expectation of large returns upon the whole of these undertakings. Making allowances for the money which will be wasted, and for the mistakes which will be made in the construction of works of such magnitude, and of which our experience is imperfect, I do not calculate upon obtaining for many years to come much more than will cover the interest and sinking fund of the capital invested, and I shall be content to leave it to some unborn successor of mine to congratulate the Council upon being in a condition to defray any considerable portion of the public charge from the profits of reservoirs and canals. But whether these works are to be profitable or unprofitable, we have resolved to undertake them without delay, and on a scale as large as our immediate resources in skill, labour, and materials will permit. Money will not be wanting to any amount that may be required, but a large and sustained expenditure for an extraordinary service such as this, cannot be provided out of ordinary revenue;—I say we can no longer be dependent on the resources from which irrigation works have hitherto been supplied. Our surplus years are few and far between; and our cash-balances are not more than sufficient for the ordinary demands of the public service. We have resolved, therefore, with the hearty approval of the Secretary of State, who has enjoined the Government to spare no means for the furtherance of this great object, to make special provision for this branch of public works. From henceforth, therefore, the estimate for irrigation works will be removed from Current Account to Debt, in other words the annual charge for the construction of canals, reservoirs and other works of this class will be provided for by loans, and the interest of these loans only will be charged to the expenditure of the year. The amount which will be required during the ensuing year for distribution to the Local Governments on account of irrigation works does not exceed £700,000; I wish it were double or treble that amount, but hasty preparations for large expenditure on such projects would be ill made; in addition to this sum, an outlay may be required for the commencement of the great works for utilizing the waters of the Soane. This project, for which the plans and estimates have long since been completed, has been delayed by negotiations with the East India Irrigation Company, who

undertook the work, but who pressed for the concession of a still more extensive scheme. It is doubtful if the Company in the present state of the money-market will be able to fulfil their contract; but in case they should fail, the Government are ready and willing to proceed with the work. While I am on the subject of loans, I may as well add that we have discontinued the advances which have hitherto been made for special works in the town and island of Bombay against the proceeds of the land sales in the island. The sales having been suspended for the present on account of the total cessation of speculative enterprize, it is no longer possible to balance these transactions within the year: but as we were unwilling that the works at Bombay should be discontinued, we lately borrowed £600,000, and intend to borrow £400,000 more in the ensuing year, that the works may not be interrupted. We are also in correspondence with the Government of Bengal on the subject of an advance to the municipality of Calcutta of a sum of £520,000 in three years, to enable them to proceed with the water-works so necessary for the health of the town. Altogether, we shall probably borrow to the extent of £2,000,000 during the year 1867-68. Works of great public utility will thus be promoted without any strain upon the revenue, and the cash-balances will be kept full.

The only other alterations which have been made in the accounts are the removal from the balance-sheet of revenue and expenditure of the estimates for the Straits' Settlement, which will be detached from the Government of India at the commencement of the financial year, and also of the estimates for the East and West Berars. As the revenues of these districts, commonly called the Assigned Districts, like the revenues of Mysore, are collected and administered in trust for the Native Government, they have properly no place in the Indian accounts.

The expenditure for the coming year will exceed the estimates of the year about to expire by £515,032, the difference between considerable additions to and large deductions from charge. This increase is chiefly accounted for by special and temporary charges, and though part of it is nominal owing to transfers, there remains, with the exception of Opium, a steady increase under almost every head of service. I need not trouble the Council by explanations on those items in which the variation either one way or the other is caused by transfers in account; nor will I dwell on petty details; but merely refer to those points which require special notice. The interest heads show an aggregate increase of £350,000, partly accounted for by interest on the new Debenture Loan of £600,000; by interest on the assets of prize money; by interest

payable to the Railway Companies, in accordance with a recent arrangement by which the Companies are allowed interest on their balances of net traffic receipts; and by a provision of half a year's interest on the projected loan of two millions for reproductive works, and works chargeable to the Bombay Special Fund.

The increase of £117,753 under Land Revenue is due partly to the transfer of petty charges from the Public Works Department, but mainly to increased salaries to Deputy and Assistant Commissioners, Oudh, North-West Provinces, and Panjáb. The cost of the Telegraph Department is necessarily augmented by £113,688 on account of the Indo-European Line, the receipts of which are credited to the revenues of India. The charge for Law and Justice exceeds the former estimates by £271,914, the greater part of which is caused by the improved salaries of uncovenanted Judges and ministerial officers in the three Presidencies; and a portion is due to stores supplied to the Convict Department at Port Blair. The advance of £59,448 under Police is caused by the organization of a body of Railway Police, and the repairs of Police stations formerly charged to the Public Works Department. An extra expenditure of £94,599 occurs under Marine in consequence of new ships having been put in commission in Bombay, and of services to the Indo-European Telegraph. The head of Education, Science and Art as usual shows a steady progress. The increase next year will be £72,000; but as this increase is chiefly on account of grants-in-aid, and thus represents the efforts of the public to promote the cause of education, the additional charge will be a subject of congratulation rather than otherwise. I do not know that I can say so much for an increase of £106,885 which appears under the next head of the account, allowances and assignments under treaties and engagements. The pecuniary embarrassments of Prince Azim Jah, together with the question of making a permanent provision for the future maintenance of His Highness in a position suitable to his rank, have frequently been under the consideration of Parliament and Her Majesty's Government. The result is that it has been determined to assign £150,000 for the payment of the Prince's debts, and to provide an additional annual allowance of £15,000, which will be distributed with His Highness' concurrence in such proportions as appear best adapted to secure the future dignity and independence of the Prince and his family. I have only to notice one other head, that of Miscellaneous, which contains an item of melancholy import. The Government will advance next year £410,000 for the purchase of grain for the population of Orissa. Of this sum of £410,000, it is estimated that £260,000 will be recovered; and the balance £150,000 represents the differ-

ence between the price at which the grain will be bought, and the price at which it will be sold, and this difference is charged to revenue.

The army estimates call for no particular remark. Comparing budget-estimate with budget-estimate (for comparison between the budget-estimate and the regular-estimate for eleven months would be quite impracticable), there is a saving of £520,904, which is accounted for by the removal of the charges for the Berars and the Straits, and transfers of charges for beer and rum to the Home Accounts, and by leaving out the estimate for freight for the reliefs who will henceforth be conveyed by the new steam transports.

The result of these figures and of others which I have not noticed in the general statement, is an aggregate increase, as compared with the budget-estimate of the current year, of £515,032.

But before I leave this part of the subject, I will notice the special charges by which the expenditure of the ensuing year will be exceptionally increased. There will first be £240,000 for transport-ships; £165,000 in payment of the debts and provision for Prince Azím Jah; £150,000 loss on the sale of grain in Orissa, and Land Revenue remitted to the amount of £30,000 on account of the famine; the whole amount being £585,000.

I need not trouble the Council in detail with observations on the majority of the items on the receipt side of the sheet. Land Revenue shows the ordinary rate of progress. There is a falling off indeed, on a comparison of the Budget figures of the present year and those for 1867-8, of £200,000, but excluding the Eastern Settlements and the Berars, there is in fact an improvement of the revenue to nearly that amount, notwithstanding the remission in Orissa. Some of this improvement is due to waste lands brought into cultivation and to enhanced rents in Madras and Oudh from revised settlements. In Madras there is also an improvement of £93,000 in Ábkárí receipts.

Upon the next item, that of Customs, I must trouble you at greater length.

The Council are aware that the Customs tariff has been revised by a Committee with a view to the better classification of the articles, to a re-adjustment of value and charges, and to the removal of duties not so valuable to the revenue as they may be obstructive to trade. The Committee have prepared a new classification which renders the tariff far more simple and intelligible than it is at present. Instead of enumerating certain articles which shall be free, and leaving every other article subject to duty, the Committee have adopted the opposite plan of enumerating the articles which are to pay Customs duties,

every article not enumerated being free. Such is the mode in which the English tariff is framed, and though its adoption in this country may be attended with some small loss of revenue, that sacrifice is compensated by the liberation of commerce from petty charges, which though they may not be grievous, are vexatious, and obstructive to the transactions of business. But the Committee propose more important changes. They have removed from the column of charge upwards of 40 articles, leaving only 97 articles further reduced to 65 classes of articles, upon which duty is in future to be collected; and they abolish export duties on 88 articles, retaining 9 classes of articles only on the export list. The amount of revenue which will be lost by this large remisssion of duty is £122,000, but this includes a sum of £76,000 formerly paid by saltpetre, though, from the decay of the trade, this product has not lately yielded any appreciable revenue. The loss of revenue, therefore, properly attributable to the reduction of the tariff recommended by the Committee does not exceed £46,000, adding to which £16,000, the amount of import duty given up, the loss is about £62,000, but adding £76,000 for saltpetre, the Customs revenue is diminished by about £140,000 a year. As a compensation for the loss, the Committee suggest that the export duty on grain, which is at present two annas a maund, should be increased; and they point out that every anna of additional duty would yield £160,000. This measure is urged by the Committee, not only as a legitimate mode of improving the revenue, but also on the ground of its tendency to check the exportation of a staple article of food at a time when a large portion of the population have perished by famine, and while the survivors are still on the brink of starvation. High authority besides that of the Committee may be cited in support of this view. In 1857, in the prospect of scarcity, a prohibitory duty on the export of grain was proposed in the Legislative Council with the concurrence of the Board of Revenue. This extreme measure, however, was not adopted; but in the year 1859, the duty was raised from half an anna to two annas per maund; yet so far was this increase of duty from checking the export trade, that the exportations of rice increased in the following year from five millions to eight millions of maunds, and went on increasing for several succeeding years. It was only during the last year and the present year, when prices rose so high as to make the home market more remunerative than the foreign, that the export trade declined. We disclaim, however, the policy of putting a duty on grain for the purpose of keeping it at home during a period of scarcity. Even if such a policy were a sound one, nothing short of a prohibitory rate would suffice to carry it into effect; and certainly it is not our intention to propose anything of the kind. On the contrary, the only question

which we have considered has been, whether a moderate increase of the duty for the benefit of the revenue would interfere with the export trade, and for the reasons which I have mentioned, we have come to the conclusion that no such consequence would ensue. We propose, therefore, to raise the export duty to three annas per maund, which will add about £160,000 to the revenue derived from this source.

The Committee also recommend an alteration of the Wine Duties, by which the present uniform duty of one rupee the gallon shall be increased, with reference to champagnes and sparkling wines of the more costly growths, by eight annas, or fifty per cent.; and shall be decreased in the same proportion upon clarets and the lighter class of wines. A differential duty in favour of this latter class of wines was adopted in 1863 without any other result than a proportional loss of revenue, the quantity and value entered for consumption under the reduced duty being nearly the same as under the higher rate; the whole amount of the remission was in fact transferred from the coffers of the State to the profits of the foreign grower or dealer, without benefiting the consumer in the least degree. I see no reason to suppose that any other result would follow from a further remission of the duty; and if any change were to be made, experience points rather to the restoration of the former rate than the reduction of the present; but we propose to leave the duty on light wines unaltered, and to adopt that part of the proposal of the Committee which increases the duty on the more expensive wines. In one particular, the proposals of the Government are in advance of the recommendations of the Committee: we have placed machinery, and the component parts of machinery, on the Free List. The revenue derived from this source is about £5,000 a year, and is an increasing revenue; but the difficulty of discriminating between machinery for agriculture, railway and other purposes, which is exempt from duty, and machinery of a different description which is subject to duty, has given rise to so many questions in the Custom House, that we have thought it better to give up the taxation of articles which, whatever their description may be in the tariff, are all imported for purposes more or less conducive to the material prosperity of the country.

There is only one other remark which I have to make before quitting this branch of the subject. It relates to the important articles of Cotton, Piece-Goods and Twists. We retain the existing rates of five and three and a half per cent. *ad valorem;* but the valuations have been reduced to correspond with the present state of the market. Considering, however, the present uncertain and fluctuating condition of the trade, the Committee, with the concurrence of the Chambers of Commerce, have recommended that these values shall be

re-adjusted when the result of the American cotton crop of the present year shall become known. I need scarcely say that the Government concur in this view.

Notwithstanding, however, that the result of the recommendations of the Committee, as they have been modified by the Government, is a balance in favour of this branch of the revenue, the receipts from Customs for the next year will show a decrease of £56,970, chiefly attributable to the depression of trade,—an estimate which we hope may be eventually reversed.

Salt is increased by £544,770, chiefly in Bengal and Bombay, in consequence partly of increased consumption, and partly of sales of home-made salt in store.

I have estimated Opium at Rupees 1,150 a chest. I am told that this estimate is too low; and I am referred to the price of the day and the rising tendency of the market. But the price of the day is no criterion for the estimate of a year. When Sir C. Trevelyan took Rupees 850, the price which had been realized by the last preceding sale, he based his estimate on a price which was exceptionally low; if I had taken Rupees 1,500 in March last, which was the price realized in that month, I should have taken a figure which was exceptionally high. Whether I take the price high or low, the market is in no wise affected by my estimate; but if I adopt too high a figure, my provision of ways and means for the service of the year is materially affected, and all my calculations are thrown out of gear. The principle which I have taken for my guide is this: I have taken out the average of the prices of each of the last four years; and putting these averages together, I have taken the average of the whole. By this process, I arrive at the figure 1,131. I have estimated Opium at 1,150.

Our estimate of the Stamp revenue has been increased by the amount which we expect to realize from the revised scale of institution stamps, which has been for some weeks under the consideration of the Council, and will, I hope, shortly receive its assent.

The Committee which prepared the way for legislation on this subject by a most careful and searching investigation into the whole question, have estimated the addition to the revenue from the adoption of the revised scale at £680,000; but upon this point they do not pretend to offer any more than a very general and conjectural opinion. It is not improbable that the amount which the Committee have named may be reached, and even exceeded; but in calculating upon a revenue to be derived from a resource so obscure and capricious as the

litigation of India, we have thought it prudent to be very moderate in our estimate; and we have, therefore, limited our estimate of the increase of the Stamp-duties on this account to £500,000.

Mint.—There is still a decrease under this head of £96,560, representing the loss of profit derived from the coinage of copper, for which the demand is fully supplied.

Public Works.—The decrease of £498,800 from this source is wholly attributable to the exclusion of the accounts of the Special Fund at Bombay from the revenue accounts.

The cash-balances at the close of the ensuing year will be £10,612,168, but this amount will be increased by any re-payments which the Railway Companies may make of the advances, to the extent of nearly three millions, which have been and will be made by the Secretary of State to prevent a suspension of the works on account of the temporary difficulty of raising funds.

The final result of the comparison of the estimates of revenue and expenditure is an adverse balance, after taking credit for the new Customs and Stamp-duties, of £1,057,522.

I should have wished, if possible, to have made up the deficiency of the revenue wholly by indirect taxation, and the equalization of the Salt tax has been suggested from many quarters as an easy mode of balancing the account. It is no doubt true that an addition to the Salt tax, which would yield a considerable revenue, might be easily levied without any cost of collection, and it has been confidently asserted that such an addition would not be oppressive to the people, whose condition has been materially improved by the rise in the value of labour within the last few years. But the enhanced wages of labour have prevailed chiefly in the Presidency towns and the surrounding districts, and have not extended to the great mass of the population upon whom the pressure of the Salt tax almost entirely falls. The Customs and Excise duties on salt amount to 5½ millions sterling; and if you leave out the Land revenue, which is not so much a tax as a rent, and the Opium returns, which are not paid by the people of India in any form, nearly one-third of the revenue is drawn from the great mass of the labouring people, whose wages on the whole have not risen beyond the rise in the cost of the necessaries of life.

We shall not, therefore, be tempted by the facility with which a large additional revenue would be raised by an increase of the Salt tax, so long as there are other classes of the community which do not bear their fair share of

the public burdens. If we leave out the Land revenue, which I repeat is more a rent than a tax, the people of India are no longer subjected to any form of direct taxation. But, though indirect taxation is the mode of raising the revenue most acceptable to the people of this country, as it is to the people of every other country, and is so far the preferable mode, still there are classes which, in India especially, indirect taxation does not reach. The greater part of the Excise and a fair proportion of the Import Duties are drawn from the bulk of the population, upon whom the Salt tax almost exclusively falls. The Stamps, which yield less than either Abkárí or Customs, mainly represent the profit which the State derives from the transactions of property and commerce.

It would be idle to discuss the question whether the landholder contributes his just proportion to the public service. His contribution has been fixed by the terms of the settlement, and he cannot justly be subjected to any direct tax which does not equally include other classes of the community. For a similar reason, the fund-holder cannot be singled out. A tax upon public servants would be simply a reduction of salaries, a measure which is governed by considerations wholly distinct from those which determine the imposition or the assessment of a tax. But none of these objections apply to Professions and Trades. Taxes upon certain callings, occupations, and trades have long been established in the system of English finance, and yield nearly two millions a year; they existed before the income tax, and have been continued without abatement during all the changes which the income tax has undergone.

I will not weary the Council with statistical details. It is sufficiently shown by the income tax returns, that there are large classes of persons engaged in lucrative occupations and trades who contribute little or nothing to the revenue. We propose to place a moderate duty on these classes in the shape of a License Tax. In 1859 a tax of this description, but on a very extensive scale—partaking in fact of the nature of a special income tax—was passed after much discussion in the Legislative Council, but was never carried into execution, having been merged in the general income tax adopted by Mr. Wilson. A license tax was subsequently enacted under the administration of Mr. Laing as auxiliary to the income tax, but was withdrawn after it had been partially collected, by reason of the improved state of the revenue. The license tax which I shall presently lay upon the Table is one of an exceedingly moderate character. Commencing at the point at which the income tax originally commenced, namely, Rupees 200 yearly, and terminating at Rupees 10,000, it is divided into five classes; the maximum assessment, that is, the assessment on the lowest estimated income of each class, being two per cent. Joint Stock

Companies are placed in a separate class. Thus the tax upon the lowest class from Rupees 200 to Rupees 500 yearly will be four Rupees; the highest payment by any person or partnership will be Rupees 200 yearly. The highest payment by any Joint Stock Company will be Rupees 2,000.

After the observations which I have made upon the position of public servants with reference to measures of direct taxation, the Council will possibly not be prepared to hear that public servants are not to be exempt; or rather that they are to be subjected to the tax by a special provision. I do not undertake to maintain that this part of the Bill is strictly in accordance with the principles on which it has been framed; but looking back to the history of 1859, when Sir H. Harington's measure was nearly defeated by an opposition headed by no less a person than the Chief Justice on account of the exemption of the services; and considering that it would ill become the Government to insist on the exemption of its officers from a public burden, if such a claim was questionable, we have inserted a clause in the Bill providing that there shall be deducted from the salaries of public servants the amount of duty to which they would be liable if such salaries were derived from professions or trades. Following, however, a precedent in the income tax, all military officers under the rank of Field Officers, drawing pay and allowances not exceeding Rupees 6,000 per annum, and employed exclusively on military service, shall not be liable to the duty. Non-Commissioned Officers and Officers of Police are also exempted, as well as subordinate Civil Servants drawing salaries of less than Rupees 1,000 yearly.

There is a clause in the Bill which empowers the Governor General in Council to exempt from the tax any person who may be able to substantiate a claim to such exemption; and to suspend the operation of the Act in any part of India for which, for local reasons, it may not be just or expedient to enforce it.

These are the provisions of the Bill. We might by a multiplication of the classes have affected to make the distribution of the burden more equal; but while such an arrangement would greatly add to the cost of collection, it would give rise to infinite contention, and increase the discretionary power of the assessors to a greater extent than is desirable. It is difficult to estimate the produce of the tax; but upon the best information we can obtain, we have put it at £500,000. We might obtain double or treble this amount by a more comprehensive scheme of direct taxation; but to those who sigh for the restoration of an income tax, I can offer one inducement to accept the more limited measure which I shall have the honour to introduce. It does not compromise the policy of an income tax, or take up the ground which a tax of that description would cover. If, therefore, at a future period,

the exigencies of the State should render it necessary to enlarge the area of direct taxation, you may either adopt a different scale of duties for the higher classes in the Schedule, or you may remove altogether the higher classes to the income tax, leaving the license tax to operate on profits below Rupees 1,000.

I must add that the Government, without giving a definite pledge, does not propose that this tax shall form a permanent source of the Imperial revenue. During the first year the duties will be collected and credited like any other tax; but in our opinion a tax of this nature is better suited to local purposes than to the general purposes of the State. We intend, therefore, in another year to transfer it, modified if experience should suggest such modification, together with a corresponding amount of charges of a local character, to the several Local Governments and Administrations. These local charges are the most unsatisfactory part of the Budget. We can exercise no control over them, for we know nothing about them; and we must either comply implicitly with the requisitions of the Local Governments, or take upon ourselves the responsibility of disallowing such requirements. In either case we may do mischief. On the one hand, we may sanction an unnecessary charge which has been carelessly endorsed by the head of a Department who has no immediate interest in guarding against the waste of public money; on the other hand, by random parsimony, or by a parsimony regulated only by the state of the public revenue, we may check prudent and profitable expenditure. We desire, therefore, that the Local Governments shall in future determine their own expenditure, so far as that expenditure concerns merely local objects; and that they shall provide the ways and means for themselves. In the vast and various provinces which are united under the dominion of the Crown throughout the continent of India, there are many sources of revenue which might be made available for local purposes, but which could not be used for Imperial objects without giving rise to just complaints of partial exaction, or even of breach of faith. I have been during the last year in demi-official correspondence with the heads of the Local Governments on this subject, and from the frank communications which I have been permitted to hold with those eminent persons, I have no reason to apprehend any serious difficulty in effecting such a separation of responsibility as I propose; and it will be our endeavour to bring these arrangements to maturity before the close of the ensuing financial year.

Estimating the license tax at £500,000, we have still to provide for £557,522, and we think this should be done without further taxation. In the estimate for Public Works, there is one conspicuous item which covers one-third

of the whole grant. I refer to the head of Military Works, consisting chiefly of the new barracks which are to be constructed at almost every military station in India, at a cost on the whole of nearly 11½ millions, to be spread over five years. These extraordinary works commenced in 1865, and at the close of the present financial year upwards of £1,800,000 on account of these works will have been defrayed out of ordinary revenue. The estimate for 1867-68, after making all proper abatements, is nearly 2 millions. In the following year we shall have to provide £2,800,000; and in 1869-70 £2,700,000 will be required to complete these great works. We might of course have lessened the annual expenditure by spreading it over a wider space of time; but looking at the question on the mere ground of economy, without any regard to higher considerations, there can be no doubt that economy can be best consulted by making the earliest possible provision for the health and effectiveness of the army quartered in this country. I should have preferred to go on as hitherto, defraying this charge, special and temporary as it is, out of the revenues of India. If a financier were to lay down any precise rule of separation between ordinary and extraordinary charge, there is scarcely a year in which he might not have a plausible pretence for transferring charge from revenue to capital account. I do not know how long such a process might go on; but sure I am that it would end, sooner or later, in a collapse of public credit. Questions of this sort are practically to be determined not so much by rule as by circumstances. I must remind you that we have to propose new taxation this year. Are we still further to increase that taxation on account of new barracks? In other words, is all the cost to fall on the tax-payers of the day and all the benefit to be derived, without any other cost than the annual repairs, by the tax-payers of 1870 and future years? We think we are not warranted in extending taxation for such a purpose, and that we shall fulfil our duty if we provide all that we can out of revenue, and throw a part of the burden on our successors. We shall borrow a million towards the construction of barracks in the ensuing year; and even after this million has been borrowed, the remaining million will be charged to the revenues of the year.

Thus the sum we shall provide out of revenue for this extraordinary charge is nearly equivalent to the whole estimated produce of the new taxation. In fact, had it not been for this charge, we could have exactly balanced the estimates for next year. After this statement, I need not say another word in vindication of the course we have taken. The greatest stickler for defraying all charges within the year can hardly accuse us of an attempt to evade our obligations. The million loan to be raised in aid of the barrack expenditure will form no part of the two millions which I propose to borrow for wholly different purposes. It is satisfactory to be assured that this vast

expenditure will not be unproductive of the results for which it is incurred. His Excellency the Commander-in-Chief is, I believe, in possession of some important facts bearing on this point; and if my Hon'ble and gallant friend should think fit to take this opportunity of giving the Council any information on the subject, his statement will, I am sure, be heard with interest.

I have now completed the statement which it was my duty to make, but before I release my wearied audience, I must advert very briefly to one or two points nearly connected with, if not immediately involved in, the financial affairs of the year. It will be in the recollection of the Council, that in the early part of last year, in consequence of the great influx of bullion in Bombay, we thought it expedient to ask the sanction of the Council to a measure for relieving the Government from the statutory obligations to cash Mint certificates at sight. The Council at once saw that this measure was prudent and even necessary with reference to the circumstances, and more especially to the state of the Currency Department. With a paper circulation varying from 7 to 8 millions, we had locked up in securities nearly 4 millions, which is the utmost limit of investment allowed by law. There can be no doubt that, with so limited a circulation, it was unsafe that so large a proportion of the specie representing the paper should have been converted into stock. The pressure of 1866 passed away; but as the Paper Currency remained stationary, and seemed likely to continue in that state under existing arrangements, we thought it expedient to reduce the amount of Currency stock. Accordingly, in the course of the last, and in part of the present year, we have realized securities to the extent of £640,000, and thus the coin reserve has been strengthened by that amount. The whole subject of the currency has been gone into by the Commission constituted under the orders of the Government in the early part of last year; much valuable evidence has been collected from all parts of India, and from every available source; and though the Committee separated without making any specific recommendations, I cannot but think, considering that it comprised several members of the Executive Council, which must hereafter discuss the whole question with a view to practical measures, that the Committee exercised a judicious reserve in refraining from such recommendations. Upon this subject I have only to add that the Government of India can take no action with regard to the currency without consulting Her Majesty's Government; but the Council may be assured that this is a subject to which our best consideration will be addressed without unnecessary delay. In the mean time, we have done what we could to promote the Paper Currency by affording increased facilities through the agency of the principal treasuries for the conversion of the note.

In 1862, an attempt was made to introduce the Money Order system which had worked so beneficially in England. The experiment was first tried in Lower Bengal under the direction of the Accountant General, and with such success that last year the system was extended throughout India. We do not, however, employ the agency of the Post Office, which in India is not adapted to such purposes, but work the system through the Collectors' treasuries under the central superintendence of the Comptroller General at Calcutta. Orders are now payable to the extent of Rupees 100 at any treasury in the Presidency in which they are issued, and at the general treasuries of the other Presidencies. The operation of the plan will be carefully watched, and every practicable expansion will be given to it. We have also matured a scheme for establishing Savings' Banks throughout the country under the immediate responsibility of the Government. We shall thus afford the humbler classes an opportunity of investing their savings, if they prefer investing to hoarding, or good security to high interest.

I need only further advert to the improvement which has been and will be effected in the condition and character of the minor judicial and administrative establishments throughout the country by an adequate increase of salaries and allowances, and to the temporary but most effective measures for giving employment to those who are able to work in the famine-stricken districts; at the same time urging forward agricultural improvements by advancing £20,000 monthly to the East India Irrigation Company to enable them to extend their works in Orissa.

Much more remains to be done before we shall have fulfilled the duties which devolved upon us when we assumed the responsibility of ruling over vast provinces and millions of people varying in religion and race, but all looking up with blind submission to that great Power to whose wisdom and humanity, under Providence, not merely their prosperity and well being, but their very lives, are entrusted."

His Excellency the COMMANDER-IN-CHIEF said, he ventured to follow the precedent set last year, by accepting the invitation given by his Right Hon'ble friend to offer certain explanations with regard to that portion of the financial statement which referred to the department more especially under his (the COMMANDER-IN-CHIEF's) control. It was very true, as stated by his Right Hon'ble friend, that there was a vast expenditure on account of the British Army in India; at the same time there was the prospect, not far distant nor uncertain, of the present increased expenditure resulting, not only in a legitimately increased economy, but also in great benefit to the troops on

whom the tranquillity of the country and the security of the administration depended. The Right Hon'ble Mr. Massey had alluded to the labours of the Royal Sanitary Commission in England, which had been in existence since the year 1863, and which Commission had now been resolved into a permanent body. It was a Committee of public safety, so to speak, for supervising the health, not only of the British troops in India, but of the subjects of Her Majesty throughout this country. Whenever any question of this sort involving great expenditure was discussed here, it was referred to the Secretary of State for India, and the Secretary of State, instead of disposing of the question himself, seemed to have adopted a habit of referring such questions to the Sanitary Commission, which, as HIS EXCELLENCY had said, was thus a Committee of public safety sitting in permanency. That had probably increased the difficulty of his Right Hon'ble friend as the Minister of Finance; but HIS EXCELLENCY certainly did not complain, and wished at the same time to acknowledge the great obligations which the British troops in this country, and therefore the country at large, were under to the Sanitary Commissioners. In the report of those Commissioners made in 1863, it was said that, on an average of years from the commencement of the present century to the year 1859, there was an annual mortality amongst the British troops in this country of 69 out of every 1,000, and that there were always in hospital no less than 84 out of every 1,000 men or 8½ per cent. The result was that, according to that report, with that amount of sickness, "out of an average of 70,000 men, there was, as it were, a vast hospital containing 5,080 beds, besides the loss of no less than 4,800 men, or nearly five regiments, who died yearly." Admitting fully the facts stated in that report, HIS EXCELLENCY thought it only just to the Medical Service and to the Government of India, to say that the figures, as therein stated, although absolutely true, did undeniably produce a delusive impression in the public mind both here and in England. Thus the Commissioners, while they argued on such a state of disease and mortality, had not attributed the deserved importance to the fact that the Army in this country had been almost in a constant state of war until the year 1859. It was true there were certain intervals of tranquillity, as, for instance, the long period of peace following the administration of Lord William Bentinck, but as a general fact, the conquest of India was proceeding until 1859. If there was one thing more certain than another, when they came to consider the health of troops, it was this. While the casualties in the field might be numbered without difficulty, it was almost impossible to give a proximate account of the casualties that resulted from exposure and constant movement, and being kept for long periods without cover, or under canvas or huts, until it was in the power of Government to build barracks. To give such an estimate

was certainly beyond the powers of any military officer, and as HIS EXCELLENCY believed of any medical officer either. The consequence of such a state of things had never been sufficiently considered by the public in England, in which he must include the Sanitary Commission. It was undoubtedly true that the rate of mortality and sickness depended, not on the neglect of the Government, not on any neglect of any mortal man, but on the Army being kept constantly exposed in the field and on active service, or merely halting between campaigns. To illustrate what HIS EXCELLENCY had advanced: it was remarkable that the very year after the Sanitary Commission made their report, we had been at peace for three years and a half. What were the returns of death and sickness for that year? In that year, 1864, the returns of deaths and sickness throughout India did not exceed what would have been considered a favourable return in England twenty years ago. He would quote from a note written by Dr. Mouat, well known in this Presidency as Inspector General of Jails. In a lecture, lately delivered in London by Dr. Mouat, he said :—

"In the Bengal Presidency, in 1864, of the 54 stations in which there were English soldiers, the mortality of 41 was below 20 per 1,000: in 12 it was under 10 per 1,000: and in 7 only did it exceed 25 per 1,000.

In France the military mortality is 10·8 per 1,000 for officers, and 22·3 for men, giving a mean death-rate of 19 per 1,000, or one per cent. below the present Bengal rate.

In the West Indies, French soldiers die at the rate of 75 per 1,000: in Algeria, of 70 per 1,000: and when formerly employed in Egypt, their loss was 69 per 1,000."

HIS EXCELLENCY therefore thought he was justified in saying, that they had reached a point with regard to sanitary arrangements which did not altogether depend on the recommendations of the Commission. At the same time, whilst he maintained that the Sanitary Commission perhaps over-stated their case, he for one was glad that they had done so; for they had thus been the means of awakening the public conscience to a great duty, for the performance of which the military and medical officers in this country had long been asking, but which had been set aside on financial considerations. Now, as soon as the cry arose in England, we saw that form and substance had been given to that which had so long been sought for in vain. All that had been done in the last three years had been progressive, and was producing better results: instead of the average sickness of the British troops in the Bengal Presidency being 84 in the 1,000, it was very much less. He held in his hand returns of the British troops in hospital in that Presidency. In the month of September 1866, which was the worst month for sickness in the Army, the average was under seven per cent

in hospital, in October, which was also a sickly month, it fell nearly to six per cent.; in November it reached a little over five per cent.; and in December about four and a half. That was a very great improvement on the state of things as represented in the Sanitary Commissioners' report, because he had taken two of the most unhealthy months of the year—September and October—and two other months in which the troops were recovering their health after the subsidence of the rains. He also held in his hand a return which had been prepared in accordance with an idea suggested to him by the report of the Sanitary Commission: it was a return showing the comparative health of all military stations, and had been prepared in consequence of a suggestion of the Sanitary Commission, that, instead of going on general facts, regiments should be traced through their history from the time of their arrival in this country to the date of their return to England. He had enlarged on that suggestion and caused this return to be prepared, which was called a "quarterly return of sickness and deaths among Her Majesty's British Forces in the Bengal Presidency, exhibiting the comparative healthiness of the principal stations occupied by them." This gave a comparative statement of the health of every station in the Army during each quarter. There was a statement of mortality occurring in each station, and each station stood in the list according to its relative position of health. When a sufficient number of years had elapsed for a collection of such statements, it would be of great importance, as enabling Government and his successors to correct delusive estimates of the comparative health of the different military stations. There was nothing that gave Commanders-in-Chief more trouble than being met by statements as to the unhealthiness of this or that station, which it was, of course, absolutely necessary that somebody should remain to garrison. Whereas, if reports came up from the commanders of regiments, from medical officers and from Generals in command of Divisions, representing the necessity of removing a regiment from a particular station, it put the Commander-in-Chief and the Government to great embarrassment and difficulty. It was painful sometimes to resist such appeals, while it not seldom happened that the circumstances on which reliance was placed were occasional or much exaggerated. The Council were perhaps aware that Peshawur had had the credit of being one of the worst stations in India. It had been constantly held up as the great example of unhealthiness. His Excellency had ventured to contest that opinion, though, at the same time, he had great authorities against him. But having been himself for some time quartered there, and much engaged in field operations on the frontier in former years, he could not help thinking that the mortality and sickness attributed to that station, which had been solely ascribed to malarious influences, was often due to the fatigue and distress consequent on a state of continual exposure and

extra duty. When he was serving in that station, he was himself in the field continually from October to July: there were troops always in the field throughout the cold weather, the hot months which followed, and a portion of the rains. In a country verging on the tropics, whose climate was so subject to malarious influences, no men could stand such exposure. Much of the sickness declared inherent in Peshawur might therefore be properly ascribed to constant active service in the field, to which troops serving in that station were more liable than any others. He had taken the liberty to mention this to Lord Strathnairn when he was in Bombay. His Excellency the COMMANDER-IN-CHIEF had taken great pains to verify that opinion, and to see whether he (the COMMANDER-IN-CHIEF) was right or wrong, and he had the satisfaction to say that, during the past year, 1866, Peshawur, instead of standing low in the list of stations placed according to health, stood well both as regarded casualties and men in hospital. It stood nineteenth on the list out of fifty stations, and below it were such stations as Chinsurah, Shájíhánpúr, Roy Bareilly, and so on. He did not wish to ascribe more importance to that circumstance than it deserved; but he thought it showed that Peshawur, besides having the natural influences of climate to contend against, was also a station where the troops were necessarily liable to more active service and exposure than in any other station. It also showed how much might be done by attention to sanitary measures, and where the power to amend sanitary conditions necessarily ceased. It further proved that there might be an explanation of the bare facts, as shown by returns of sickness and deaths, which constantly escaped the notice of the public, and even of scientific authorities, unless attention was specially directed to it. During the last three years an order had been in force, declaring that the area allotted to each soldier in barracks should be ninety feet: that was in accordance with a recommendation of the Sanitary Commission. Although no such order had been previously in existence, still, in a great majority of barracks, there was not a much less area given to each soldier, at all events during the hot season. It was a fact, as shown by medical officers, that if we would ensure the health of our troops, we must look not only to avoiding malarious influences, but also to over-crowding. This rule had now been stereotyped for ever by Government, and commanding officers could not depart from it, except at their peril. There was no one condition, no one order ever issued by a benevolent Government, which had so much conduced to health, as that to which he had referred. He recollected when Fort William was a Golgotha, when the amount of sickness in that Fort caused it to be dreaded by the troops worse than Sierra Leone. Now there was hardly a station which exceeded it in sanitary condition. Much the same might

be said of several other stations. Conservancy and drainage defeated the malarious influences of the climate, and the result justified the expenditure which had been incurred in giving them effect by the Government of India.

There was one more point to which he wished to refer. He had observed it stated in England that opinions had been ascribed to him as if he had recommended a large diminution of the European force in this country. It would be in the recollection of the Council that, nearly two years ago, at the invitation of the Government, he considered the question of reduction, and with due regard to what he believed compatible with security, he did prepare a scheme for the reduction of the number of the rank and file of British troops, and to this, perhaps, allusion had been made. That reduction had been commenced upon last year, and had not yet been entirely completed, but he believed it would be so in the course of this year. Since 1865, he had made no further proposals for the reduction of British troops, but had only, in the execution of his office, carried out the final resolution of Government. He had made no recommendation beyond the conclusions stated by him in 1865 with respect to the three arms, nor was he prepared to make any; on the contrary he held very decided opinions that we could not safely make any further reduction in the British forces; in short, we had reached the proper limits of the establishments. We heard a great deal at home of what was called the large European Army in India. It was believed by many people in England, and perhaps by some in this country, that we had a European force not much less than that which was here at the close of the mutinies. The facts were as follows:—In April 1861 there were 82,000 men in this country, at the present date, the actual number of British troops was under 61,000. If we compared that number with the Army as it existed at other dates, we found that, in the year 1856-57, the year before the mutiny broke out, the strength amounted to 45,000 men: so that the difference between the present year and the year before the mutiny was only 16,000 men. He ventured to think that, after the experience of 1856-57, and the great lesson of Native character which they had learned in those days, the present strength of British troops was not too much to ask for to ensure the security of our empire in India. He made these remarks because he heard complaints adopted in England, and in some instances by men of authority, to the effect that we had greatly too large an European force for this country; that because there had been an improvement in fire-arms, that was a reason for the reduction of the force; and again because there were difficulties at home in the way of recruiting, that was a reason for reduction; and lastly that because, according to the Sanitary Commissioner's report, there were great sickness and mortality amongst the British troops in India, which he ventured to say from

the facts he had laid before the Council was not actually the case, and was not attributable solely to the climate, that *that* was a reason why we should not expose British troops to such danger in this country. But in his opinion all those reasons were absolutely illusory. With regard to improved arms, every one knew that the arms at present in the hands of the British troops in India were far superior to any that they would have to contend against, and he could therefore see no absolute necessity for giving breach-loading arms to the troops in India under present circumstances, except the imperial and very sufficient reason that uniformity of arms should prevail among all the troops composing the British Army, wherever they might be stationed. Again with regard to the difficulties of recruiting, we had nothing to do with that; we must ask for the necessary garrison, as the great interests of India, and therefore of England, could not be imperilled. We surely should not forget the lessons of the past, and the dangers and loss we had incurred by inattention to such principles in the occupation of a vast country possessing an almost countless population. It took us two years to overcome the mutinies, and it was owing to the mercies of Providence that the struggle did not extend to ten years instead of two. We did not impose on the population of the United Kingdom a greater drain for troops than it could afford, and that was but a very small demand with regard to the enormous importance of the interests confided to the British garrison in India. In short, we could not afford to tamper with that garrison, the maintenance of which was an Imperial and by no means a mere local necessity. To do so would be as if the Government were to remove all bullion reserve, and trust to the Paper Currency by itself; that was the argument with which we should meet all those who asked us to reduce the number of British troops in India below that figure which experience and observation had proved to be indispensably necessary.

The Hon'ble MR. SHAW STEWART said,—"Sir, the Right Hon'ble the Financial Member of Council, in that clear and lucid speech which we have all listened to with such delight, referring to the commercial disaster of last year, remarked that, great as had been the losses and the stagnation of trade in all parts of the world, he was glad to say that, with one exception, commercial honour was intact; and, with a serious and melancholy emphasis that made his words all the more impressive, he stated that, that exception was Bombay.

I am far from attempting to defend all that has been done in Bombay, but I think that these words will cause great and unwonted pain to many persons in that unfortunate city,—a pain all the greater from the weight that must be given to the opinion of a person in the high position of the Right Hon'ble

gentleman. The position of Bombay has been peculiar and exceptional; the trade of Bombay, which for some years before the American war broke out had been steadily and slowly expanding, suddenly increased three or four-fold, and wealth that was enormous and almost fabulous flowed in. It found no long established machinery of commerce ready at hand to control its effects, a machinery which has been found, even in London where it exists in its most perfect form, insufficient to prevent disastrous speculation and consequent loss and suffering. Under these circumstances, it is not astonishing that persons unaccustomed to such a flood of prosperity and unprepared for its occurrence, should to a certain extent have lost their coolness and discretion; and the result has been that, when, contrary to the expectation of all the wisest politicians of Europe and of India, the American war suddenly ceased and this great trade collapsed, a great and general distress has been caused. My Right Hon'ble friend exercised a wise discretion in avoiding to particularize any classes as deserving blame, and I shall so far follow his example in saying that I think all classes must share it. But I am most confidently of opinion, that the blame is not such as to give good ground for a charge, or even for a suspicion, of mercantile dishonour. From what I know of the present state of Bombay, I believe that, if the sacrifices, the labours, and the sufferings that have been entailed on, and willingly undertaken by, the merchants of Bombay were known, the idea would be rejected.

I wish it had fallen to the lot of some one better able and better prepared than myself, to express these feelings. But I felt myself impelled to give utterance to them, because I know that Bombay does not deserve such a grave stigma as my Right Hon'ble friend has sought to attach to her."

The Hon'ble MR. COWIE said, he had intended to make some remarks on the Financial Statement of the Right Hon'ble Mr. Massey, but, considering the late hour to which the sitting had already been protracted, he (MR. COWIE) had resolved not to do more than simply to express the great satisfaction that he felt in hearing the intimation that a great proportion of the public works would in future be conducted by means of loans. It might be in the recollection of the Council that, on the occasion of the delivery of the Budget of the year 1865-66, he had recorded his opinion that it was proper to debit to Capital and not to Income those public works which were of a reproductive nature. He now only wished to be permitted to record his personal satisfaction at the determination to which the Government had come in this matter.

The Motion was put and agreed to.

The Right Hon'ble MR. MASSEY having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The PRESIDENT declared the Rules suspended.

The Right Hon'ble MR. MASSEY then introduced the Bill, and moved that it be taken into consideration.

The Motion was put and agreed to.

The Right Hon'ble MR. MASSEY then moved that the Bill be passed.

The Motion was put and agreed to.

LICENSES' BILL.

The Right Hon'ble MR. MASSEY, in moving for leave to introduce a Bill for the licensing of Professions and Trades, said that he did not intend to proceed further with the Bill that day, but hoped the Council would permit him to pass it at the next meeting.

The Motion was put and agreed to.

The Council then adjourned till the 8th March 1867.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 5th March 1867.

PUBLIC WORKS DEPARTMENT.

STATEMENT showing the Works proposed to be undertaken during the year 1867-68 from the Special Grant of 70 lakhs assigned for new works of irrigation.

District.	Works.	Amount of Estimate.	Computed Expenditure to 31st March 1867.	Proposed Expenditure, 1867-68.
	MADRAS.	Rs.	Rs.	Rs.
Godavery -	Works in the Delta of the Godavery (raising the Anicut, enlarging and improving canals, and constructing aqueducts and locks) - - -	6,79,502	3,73,420	1,66,832
Kistna- -	Works in the Delta of the Kistna (widening, improving, and extending canals, excavating irrigation channels, and constructing locks) - -	13,65,765	7,74,227	2,50,944
Nellore -	Works on the Pennair River (excavating irrigation channels and improving canals) - - -	1,82,540	1,61,374	45,903
Tanjore and Trichinopoly	Works on the Cauvery and Coleroon (constructing Lower Coleroon Anicut, and improving the channel of the Cauvery) - - - - -	5,66,580	67,261	1,50,689
North Arcot -	Works in North Arcot District (Palar Anicut, Cheyoor Anicut, and dam across the Secar River) -	1,25,200	.....	98,200
South „ -	Works in South Arcot District (constructing Anicut across the Mainmuthanaddy River, cutting the Pombey Channel, &c.) - - - -	98,958	5,354	82,906
Coimbatoor -	Works in the Coimbatoor District (aqueduct over the Vainpootoor stream, improving the Colingevady Channel, &c) - - - - -	1,15,644	55,139	55,488
Salem -	Works in the District of Salem (Anicuts across the Vallyoor and Swatha Rivers, &c.) - -	18,720	.....	18,720
Madras -	Water-supply project, &c. - - -	6,11,759	1,10,800	3,00,000
	Constructing, improving, and restoring tanks in several districts - - - - -	1,08,400	16,332	90,048
	Sundry works, under Rs. 10,000 each - -	.....	.....	40,270
	Grant for minor works, the estimated cost of which does not exceed Rs. 2,500 each - - -	.....	.....	2,00,000
	TOTAL, MADRAS -	.....	.....	15,00,000
	BOMBAY.			
Dharwar -	Canal, including aqueduct from the Mudduck Tank -	74,961	65,835	25,000
Belgaum -	Gokak Canal from the Gutpurba River* - -	.. ..	.....	25,000
Sattara -	Kristna Irrigation Project for irrigating 27,500 acres of land in the Sattara District by means of a dam at Koorsee† - - - - - -	5,09,988	5,25,576	80,000
Poona -	Moota Irrigation Scheme for irrigation of land in the Deccan‡ - - - - -	.....	.. ...	50,000
Ahmednuggur	Lyakh Project for irrigating 18,000 acres of land in the Paihra and Godavery Valleys - -	2,05,342	1,00,000	1,00,000
Sattara -	Yerla Irrigation Project - - - -	1,49,859	20,000	50,000
Ahmednuggur	Palkair on the Kadwa River (irrigation of 4,370 acres of land from the Kadwa River) - - -	64,924	.....	25,000
Ditto -	Godavery Project‡ - - - -	.....	.....	20,000
Ditto -	Prurora Project‡ - - - -	.. ...	.....	20,000

STATEMENT showing the Works proposed to be undertaken during the year 1867-68, *&c.*,—continued.

District	Works	Amount of Estimate	Computed Expenditure to 31st March 1867	Proposed Expenditure, 1867-68
		Rs.	Rs.	Rs.
Khandeish -	Jamda Canal on the Girna River (damming up the river and constructing two canals) - -	6,13 331	4,84,572	1,00,000
Upper Sindh -	Canal from Sukkur to Shadadpore, including purchase of land - - - - - -	7,29.820	3,96,788	1,00,000
Ditto -	Improving the Bijree Canal, and extending it for the irrigation of Seer Lands - - -	4,01,699	.....	50,000
Hyderabad -	Improvement to the Kazra Canal‡- - -	.....	.....	19,800
Ditto -	Enlargement of the Hyderabad Mouth of the River Foollahe‡ - - - - -			20,000
Beeruj -	Cuts in the bed of the Narra River - -	1 91,153	1,75,256	15,000
Ditto -	Thurr Canal in the direction of Oomercote† -	1,02,662	1,25,162	47,000
Ditto -	Mitrow Canal† - - - - -	5 55,332	4,98,320	57,000
Kurrachee -	New feeder to the Western Narra and Munchur Lake from Seeal Dhund near Dadoo‡ - - -	.. ...	... ..	20,000
Shahbunder -	Improving the Mahmooe Canal - - -	10,040	....	10,000
Sholapore -	Ekrookh Tank Project for irrigation from the Valley of Ekrookh to the Sholapore Collectorate -	8,98,226	3,00,000	1,00,000
Ahmednuggur	Bhatowdee Tank Project§ - - - -	3,00,000	.....	50,000
Khandeish -	Saigaum Storage Lake on the Girna River†- -	.....	.....	1,00,000
Ditto -	Improving Bundaras and Water-courses† - -	.....	.....	59,700
Baiz -	Embanking the right bank of the Narra River near Inkrow to check overflow - - -	... ..	.... .	16,000
Kaira -	Chorotun Drainage - - - -	.....	.....	10,000
	Sundry works under Rs 10,000 each - -	.....	.....	60,500
	Grant for minor works, the estimated cost of which does not exceed Rs 2,500 each - - -	.....	.....	20,000
	TOTAL, BOMBAY -	.....	.... .	12,50,000
	BENGAL			
	Provisional Grant for the Soane Irrigation Works -	. .	.....	4,50,000
	Purchase of land for Orissa Irrigation Company -	.....	.....	1,50,000
	TOTAL, BENGAL -	.....	.....	6,00,000
	NORTH-WESTERN PROVINCES.			
	Remodelling Ganges Canal - - -	.....	.... .	15,47,780
	Rajbuhas, or distributing channels, in connection with the Ganges Canal - - - -	.....	39,00,000	3,31,000
	Certain works connected with the Eastern Jumna Canal - - - - -	1,00,935	48,715	79,220
	Terai Survey in Rohilkund - - -		. .	1,00,000
	Sundry works under Rs 10,000 each - -	38,882	14,900	17,000
	Grant for minor works, the estimated cost of which does not exceed Rs 2,500 each - - -	.....	.....	2,25,000
	TOTAL, NORTH-WESTERN PROVINCES -	.....	. .....	23,00,000

STATEMENT showing the Works proposed to be undertaken during the year 1867-68, *&c.*,—continued.

District.	Works.	Amount of Estimate.	Computed Expenditure to 31st March 1867.	Proposed Expenditure, 1867-68
	PANJAB	Rs.	Rs.	Rs.
	Remodelling Baree Doab Canal - - -	.....	*	5,76,382
	Rajbuhas in connection with the Baree Doab Canal -	59,871	23,000	36,871
	Improving inundation canals on the Upper and Lower Sutlej - - - - - -	2,00,659	1,21,432	56,769
	New works and improvements, Western Jumna Canal -	5,62,584	2,44,872	3,93,178
	Buildings for Madhopoor Workshops - -	1,94,121	82,000	70,800
	Sundry works under Rs. 10,000 each - -	.....	.....	24,000
	Grant for minor works, the estimated cost of which does not exceed Rs. 2,500 each - - -	.....	.....	42,000
	TOTAL, PANJAB -	.....	.....	12,06,000
	CENTRAL PROVINCES.			
Nagpore -	Irrigation in the Nagpore District, comprising Sownair, Kuttunjee, and Bhoro and Dam Irrigation Projects - - - - - -	.....	.....	1,50,000
	TOTAL, CENTRAL PROVINCES -	.....	.....	1,50,000
	GRAND TOTAL - -	.....	.....	70,00,000

* Plans and Estimates under preparation.

† Revised Estimates under preparation.

‡ Estimates under preparation.

§ Estimates under consideration.

Estimate of Home Charges in 1867-68.

	£	£	£
Debt.			
Dividends to Proprietors of East India Stock ...	.....	629,970	
Interest on Loans contracted in England ...	.....	1,421,145	
Total, Dividends and Interest ...	.....	.....	2,051,115
Civil.			
Charges General Home Establishments, &c. ...	.....	186,000	
Amount payable under the Postal arrangements ...	.....	44,000	
Red Sea and India Telegraph—charge to India ...	.....	18,000	
Mission to the Court of Persia—charge to India ...	.....	12,000	
Her Majesty's Establishments in China—charge to India ...	.....	18,000	
Pensions and Retired Allowances ...	.....	231,000	
Furlough and Absentee Allowances ...	.....	86,000	
Miscellaneous (including India Office Site and Building) ...	.....	190,000	
Total, Civil Charges ...	.....	.....	785,000
Military Effective Charges.			
Imperial Government for Troops serving in India	638,000		
Ditto on account of cost of Education of Officers and Cadets ...	10,000		
Passage of Troops ...	38,000		
Ditto and Outfit of Officers ...	30,000		
Allowances, &c., of Assistant Surgeons on appointment ...	8,000		
Furlough Allowances ...	210,000		
On account of Contracts for construction of Indian Troop Transports ...	272,000		
Overland Troop Transports Service ...	100,000		
Total, Effective Charges ...	.....	1,306,000	
Non-Effective Charges.			
Imperial Government for Troops serving in India	220,500		
Retired Pay, including Colonels' Allowances ...	736,000		
Pensions, Lord Clive's Fund ...	118,000		
Total, Non-Effective Charges ...	.....	1,074,500	
Total, Military Charges ...	.....	.....	2,380,500
Marine.			
Pensions and Retired allowances, India Navy and Bengal Pilot Services ...	.....	52,000	
Furlough and Absentee Allowances ...	.....	2,000	
Total, Marine Charges ...	.....	.....	54,000
Total, Charges in England ...	.....	.....	5,270,615
Deduct—			
Miscellaneous Home Receipts ...	.....	.....	116,000
Net Expenditure in England ...	.....	.....	5,154,615

STATEMENT of Cash Balances in the Indian Treasuries on the 31st March 1867.

RECEIPTS IN INDIA IN 1867-68.	Budget Estimate.
	£
Revenues	46,783,110
Debt.	
Special Loans.	
1. For Reproductive Public Works	1,200,000
2. For other Special Public Works	800,000
Other receipts on account of Debt	12,044,120
London.	
Recoveries in India of Payments in England :—	
Funds, Family Remittances, &c.	1,520,672
Madras Irrigation and Canal Company, Net Earnings	2,500
Net Railway Earnings	2,754,996
Interest on Railway Earnings	37,145
Estimated Cash Balances on 31st March 1867 ...	11,132,133
	£ 76,274,676

DISBURSEMENTS IN INDIA IN 1867-68.	Budget Estimate.
	£
Expenditure in India	41,603,658
Deduct—	
Stores from England, &c., included in above ...	1,313,128
	40,290,530
Debt.	
Expenditure for Reproductive Public Works and Special Fund Works	1,270,000
Other payments on account of Debt	13,149,050
London.	
Payments in India on account of England :—	
Railways	4,789 766
Madras Irrigation and Canal Company	154,000
Other Payments	1,388,350
Remittances in England on account of payments for India :—	
Guaranteed Railway Interest	3,377,000
Other Payments	1,181,457
Unadjusted amount between Presidency and Presidency	62,155
Estimated Cash Balance on 31st March 1868 ...	10,612,168
	£ 76,274.676

Fort William,
Financial Department,
The 5th March 1867.

THOMAS PEACHEY,
Depy. Comptr. Genl. of Accounts.

R. P. HARRISON,
Comptr. General of Accounts.

E. E.
E. H. LUSHINGTON,
Secy. to the Govt. of India.

GENERAL BUDGET ESTIMATE OF INDIA,
FOR THE YEAR 1867-68.

GENERAL ABSTRACT OF THE REVENUES AND RECEIPTS, AND OF THE EXPENDITURE OF INDIA FOR THE YEAR FROM 1st APRIL 1867 TO 31st MARCH 1868.

	1865-66	1866-67.		1867-68.
	Actual.	Budget Estimate, 12 Months	Regular Estimate, 11 Months.	Budget Estimate
	£	£	£	£
CIVIL. —				
I Land Revenue	20,473,897	20,254,300	18,610,200	20,054,790
II Tributes and Contributions from Native States	709,632	683,750	651,480	696,930
III Forest	367,682	462,740	352,710	434,300
IV Abkári (Excise)	2,244,874	2,309,000	2,137,150	2,205,280
V License Tax	692,241	10,000	20,630	500,000
VI Customs	2,279,857	2,414,100	2,045,140	2,357,130
VII. Salt	5,342,149	5,533,260	5,621,770	6,078,030
VIII. Opium	8,518,264	8,500,000	6,875,700	7,713,750
IX Stamps	1,994,632	2,000,660	1,873,250	2,487,580
X Mint	494,354	409,800	239,500	313,240
XI. Post Office	406,466	391,220	355,580	595,910
XII Telegraph	190,463	183,880	288,600	303,900
XIII Law and Justice	643,628	645,700	642,060	718,520
XIV Police	146,901	236,900	203,420	246,090
XV. Marine	198,890	263,700	235,440	246,220
XVI. Education	57,538	59,150	60,860	66,090
XVII. Interest	216,824	255,840	245,650	226,900
XVIII Miscellaneous	2,311,123	400,000	362,750	347,520
ARMY—Miscellaneous	728,340	760,000	679,470	711,630
PUBLIC WORKS—Miscellaneous	917,465	978,800	411,170	480,000
	48,935,220	46,752,800	41,912,530	46,783,110
DEFICIT, including Public Works Extraordinary Charges	Surplus	72,800	2,395,247	557,522
Total ... £	48,935,220	46,825,600	44,307,777	47,340,632

		1865-66	1866-67.		1867-68.
		Actual	Budget Estimate, 12 Months	Regular Estimate, 11 Months.	Budget Estimate
		£	£	£	£
	CIVIL —				
1	Interest on Funded and Unfunded Debt	2,763,532	2,725,410	2,217,170	2,711,040
2	Interest on Special Loans for Public Works	...	....	.	80,000
3	Interest on Service Funds and other Accounts	564,119	461,830	600,394	745,189
4	Allowances, Refunds, and Drawbacks	420,471	248,720	336,966	321,612
5	Land Revenue	1,957,333	2,058,570	1,906,296	2,114,823
6	Forest	213,779	300,450	231,208	276,379
7	Abkári (Excise)	243,014	237,200	214,487	236,179
8	Income Tax	16,620		1,237	.....
9	Customs	207,514	197,950	188,661	218,221
10	Salt	339,140	344,240	346,772	369,351
11	Opium	1,894,270	1,762,940	1,616,013	1,679,972
12	Stamps	81,858	86,990	81,885	83,492
13	Mint	163,020	139,800	135,342	135,541
14	Post Office	423,304	455,830	431,772	481,120
15	Telegraph	269,218	406,840	487,862	530,538
16	Allowances to District and Village Officers	389,654	414,010	381,287	395,777
17	Administration and Public Departments	1,068,292	1,066,730	1,001,761	1,042,165
18	Law and Justice	2,423,206	2,607,790	2,413,396	2,841,803
19	Police	2,384,330	2,435,380	2,199,097	2,427,436
20	Marine	557,397	469,690	520,008	549,895
21	Education, Science and Art	670,739	763,230	683,190	821,667
22	Ecclesiastical	154,886	159,160	147,479	157,690
23	Medical Services	274,889	308,440	276,490	301,205
24	Stationery and Printing	181,954	154,580	154,564	168,056
25	Political Agencies and other Foreign Services	220,656	201,720	221,340	221,610
26	Allowances and Assignments under Treaties and Engagements	1,801,793	1,896,540	1,567,782	1,980,792
27	Miscellaneous	1,281,099	362,700	327,427	431,980
28	Superannuation, Retired, and Compassionate Allowances	668,987	679,240	687,585	680,412
	ARMY	13,909,412	13,181,210	12,338,959	12,657,920
	PUBLIC WORKS ORDINARY —				
	Public Works	4,674,625	5,770,000	4,640,754	3,212,500
	Supervision and cost of Land for Railways	225,572	391,600	508,911	112,000
	Loss by Exchange on Railway Transactions	50,506	233,130	210,330	185,077
	Income Tax Grant	110,000	.....	60,100	.....
		40,615,189	40,521,720	37,137,555	38,161,432
	Expenditure in England heretofore included in the Indian Accounts, viz — STORES	505,735	748,350	623,962	1,117,226
	Guaranteed Interest on Railway Capital less Net Traffic Receipts	41,120,924 31,641	41,270,070 533,330	37,761,537 942,914	39,278,658 582,359
		41,152,565	41,803,400	38,704,451	39,861,017
	Net Expenditure in England (Home Charges)	4,982,164	5,022,200	5,603,326	5,154,615
	Total £	46,134,729	46,825,600	44,307,777	45,015,632
	PUBLIC WORKS EXTRAORDINARY —				
	Military	...	.....	...	1,831,009
	Jails	...	.....	...	82,000
	Communications	.	.....	...	361,000
	Embankments	...	.....	..	51,000
					2,325,000
	Grand Total £	46,134,729	46,825,600	44,307,777	47,340,632
	Surplus, including Public Works Extraordinary Charges	2,800,491			
	Surplus excluding Public Works Extraordinary Charges	.....	.....	.....	1,767,478

FORT WILLIAM,
FINANCIAL DEPARTMENT,
The 5th March 1867

E H.
E H. LUSHINGTON,
Secretary to the Government of India.

Office Supdt Govt Printing - No 159 L. C.—15-3-67 —200

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 8th March 1867.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding*.
His Honour the Lieutenant-Governor of Bengal, K. C. S. I.
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Colonel Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble H. B. Riddell.
The Hon'ble E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble C. P. Hobhouse.
The Hon'ble J. Skinner.
The Hon'ble D. Cowie.

CIVIL COURTS (JHÁNSÍ) BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to define the jurisdiction of the Courts of Civil Judicature in the Jhánsí Division, be taken into consideration. He said that the Committee had made no alteration of importance, but the Hon'ble Mr. Brandreth, who was present at one of its meetings, had stated that Section 19 had not been found to answer well in the Panjáb. That Section provided that:—

"The Deputy Commissioner may direct the business in the Courts subordinate to him, holding their sittings at the same place, to be distributed among such Courts in such way as he shall think fit. Provided that no Court shall try any suit in which the amount or value of the claim shall exceed its proper jurisdiction."

That was the rule copied from the Central Provinces Courts' Act, and the same as that laid down in the Code of Civil Procedure; and it seemed to him (MR. MAINE) just and reasonable. For some reason, however, peculiar to the Panjáb, it was said that the rule had not worked well in that Province, and that, in fact, it had become a dead letter. There was, however, some difference between the Panjáb and the Central Provinces where the rule had worked satisfactorily; and probably it would be found that in this respect Jhánsí resembled the Central Provinces rather than the Panjáb. MR. MAINE perceived that the Hon'ble Mr. Brandreth had placed on the List of Business a notice of motion for leave to bring in a Bill to empower Deputy Commissioners in the Panjáb to distribute the business in the subordinate Courts. He would suggest that a communication be made to the authorities in Jhánsí and the Central Provinces, as to whether any such change was desirable, and should the reply be in the affirmative, power could then be taken as to that District and those Provinces. MR. MAINE did not however wish to delay the passing of the present Bill, nor, on the other hand, did he wish to introduce a provision such as Mr. Brandreth proposed for the Panjáb, without affording the Local Government an opportunity of expressing their opinion on the subject.

The Committee had added, at the suggestion of the High Court of the North-Western Provinces, Sections empowering that Court, in the exercise of its extraordinary original civil jurisdiction, to call up and determine suits instituted in the Jhánsí Courts, to exercise powers of superintendence of such Courts, to call for returns and to frame rules of practice.

The Bill, as referred to the Committee, provided that it should come into operation as an Act from the 1st March 1867. The Committee had substituted such day as the Local Government shall declare by notification in the official *Gazette*.

The Hon'ble MR. BRANDRETH said, he had received a note from Major McNeile, at present Commissioner of Delhi, but formerly Commissioner of the Jhánsí Division, in which he mentioned the Bill now before the Council, and stated his opinion that the Deputy Commissioners ought to be allowed to distribute the business of the Courts subordinate to them as they thought fit. No doubt further enquiry ought to be made before such an amendment could be made in the Bill; he would therefore gladly adopt Major McNeile's suggestion if he obtained leave to introduce the Bill to enable Deputy Commissioners in the Panjab to distribute the business in the subordinate Courts, which

stood in his name in the List of Business for the day. He thought that power should be taken in the Bill to extend it to other Provinces, such, for instance, as Ájmír.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

ADMINISTRATION OF JUSTICE (DARJÍLING) BILL.

His Honour the LIEUTENANT-GOVERNOR moved that the Report of the Select Committee on the Bill to make further provision for the administration of Justice in the District of Darjíling, be taken into consideration. He said that the Select Committee had very materially altered the scope of the Bill, which was originally intended simply to substitute the Commissioner of Kúch Behár for the Judge of Dinájpur as the proper Court in which Civil and Criminal cases should be heard; but it appeared that there was no longer any necessity for continuing special jurisdiction in Darjíling, or maintaining it on a different footing from that on which all other districts in the Lower Provinces now stood. Of course, therefore, it was advisable to repeal the special Act altogether, and to leave the administration of Civil and Criminal justice in Darjíling to be governed by the Codes of Civil and Criminal Procedure. The only difficulty which arose was as to whether the jurisdiction of the High Court would, under those circumstances, extend to Darjíling, that District not having been, at the time when it was placed under the jurisdiction of the High Court, under the operation of the general Acts and Regulations. Therefore, while proposing to repeal Act X of 1863, the Select Committee had added a clause declaring that the High Court shall have and exercise, with regard to the district of Darjíling, all such jurisdiction and powers as it has and exercises with regard to any other territory. The effect of the Bill would be to place Darjíling exactly on the footing of other Districts, and whatever orders might be necessary to define the position of the Courts, or give authority to the Judges, or to constitute Courts of Small Causes in Darjíling, would be made by the executive authority.

The Motion was put and agreed to.

His Honour the LIEUTENANT-GOVERNOR also moved that the Bill as amended be passed.

The Motion was put and agreed to.

TRANSSHIPMENT OF GOODS (BOMBAY) BILL.

The Hon'ble MR. SHAW STEWART moved that the Report of the Select Committee on the Bill to authorize the transshipment, without payment of duty, of goods imported into Bombay by steamers, be taken into consideration. He said that he had a few remarks to make and he was glad to see the Hon'ble Mr. Cowie, who had been a member of the Committee on the Consolidated Customs' Act of 1863 in his place in Council ; for MR. SHAW STEWART trusted that the Hon'ble gentleman would bear him out in the observations he was about to make regarding the modifications of the Act of 1863 which this Bill effected. In the Statement of Objects and Reasons, he had stated that Government would lose a certain amount of revenue from the operation of this Bill, but since it had been introduced and published, several communications had been received, expressing doubts whether any revenue was realizable on goods transshipped in harbour, and whether any loss would be caused in the Customs Revenue by the proposed Bill. Those doubts were not altogether unnatural, as the Consolidated Customs' Act did not contain any specific provision on the subject. The Bombay Act of 1852, on which the Consolidated Act of 1863 was in some measure founded, contained a provision (Section 33) which declared that, if any goods brought to any port in any vessel be transshipped in such port, they should in all cases be subject to the same duty as if they had been landed and passed through the Custom House for re-exportation in the vessel into which they might be transshipped. It did not appear from the proceedings of the Select Committee on the Consolidated Customs' Act why any provision of the kind was not included in the Act of 1863, and such a provision would be very desirable. But a careful examination of the Act left no doubt of the intention that the transshipment of goods should be liable to duty. For instance, Section 110 of Act VI of 1863 gave a special permission to consider goods transshipped for removal to ports within British India as ware-housed goods. The clear inference was that, whenever goods were transshipped to ports out of British India, they must be considered as landed, and therefore subject to duty. Again Section 182 declared—

> "If two or more vessels belonging to the same owner be at any port in British India at the same time, any articles of marine stores in use or ordinarily shipped for use on board may, at the discretion of the officer in charge of the Custom House, be transshipped from one such vessel to any other such vessel without payment of import duty."

clearly meaning that all articles not coming under this description were subject to duty on transshipment. The practice in Bombay had always been to pay full duty on all goods landed, not in bond, and to recover seven-eighths on re-export, one-eighth being considered as the drawback ; but it appeared that in Calcutta a different course was followed. Here, when goods were intended for

re-export, they were landed in bond, warehoused and re-shipped free of duty, instead of being re-exported on drawback. But, apparently, from the application of the Calcutta Chamber of Commerce, this course was found inconvenient, and the merchants desired to have an easier method of dealing with goods re-exported from Calcutta. This Bill would provide such a course, and it was therefore proposed to extend it to Calcutta and Madras. It would be easy to frame a scale of transshipment fees, ample to cover any loss or extra cost that might be caused to Government, and sufficiently low to suit the wishes of the mercantile community; and to make the transshipment of goods very much simpler than the elaborate system now in force.

His Honour the LIEUTENANT GOVERNOR wished to ask whether there was any particular reason why the operation of the Act should not be extended generally to all ports in India, as well as to Calcutta, Madras and Bombay—why, for instance, should the Act not apply to such ports as Rangoon and Chittagong? It seemed to him that the same rule should be equally applicable to those ports.

The Hon'ble MR. SHAW STEWART said that it had never been represented that any inconvenience had been suffered in the smaller ports, and he believed the transshipment of goods did not take place except in the larger ports.

His Excellency THE PRESIDENT suggested that, as regarded the minor ports, a short Bill might hereafter be introduced if it were found that the inconvenience complained of in the larger ports were felt in them.

The Hon'ble MR. COWIE was under the impression that the Bill was to apply to sailing vessels as well as to steamers. He thought that the necessity might arise as regarded sailing vessels, but perhaps not so frequently, and he saw no reason why the same rules should not apply to sailing vessels as to steamers.

The Hon'ble MR. SHAW STEWART, in reply to the remark of the Hon'ble Mr. Cowie, said that he found the following sentence in the Report of the Select Committee :—"We do not find any case made out for extending the Bill to goods imported in sailing vessels." Sailing vessels were not generally in such a hurry to discharge their cargo and start on another voyage as steamers were, and the necessity for the law had first arisen out of the case of goods imported by steamers only, no instances having been shown in which its provisions where required for goods imported by sailing vessels.

The Right Hon'ble MR. MASSEY said, the inconvenience with regard to steamers was entirely in consequence of the rapidity with which they required

to work, and there was not the slightest ground for extending the provisions of the Act to sailing vessels. Nor did he think that it was necessary to extend the Act to the minor ports, because cases of transshipment were of rare occurrence there. If a practical necessity should hereafter arise, and proper representations were made to Government to extend the Act to the inferior ports, it could be taken into consideration hereafter as explained by His Excellency the Viceroy. But it was desirable that at present the Act should apply only to the larger ports.

The Hon'ble MR. SKINNER thought it would be desirable if a maximum fee were fixed in the second Section, but great difficulty had apparently been experienced in endeavouring to fix the amount. He trusted, however, that the concluding sentence of the preamble might be taken as a pledge on the part of Government to levy as small a fee as was consistent with the necessity of the case.

His Excellency THE PRESIDENT thought that that matter should be left to the discretion of the Executive Government.

The Right Hon'ble MR. MASSEY apprehended that, under the Consolidated Customs' Act, a wide discretion was left to Government in such matters: there was no necessity, therefore, for legislation on the subject.

The Hon'ble MR. SKINNER made the remark as he believed it was usual in such cases to name a maximum fee.

His Honour the LIEUTENANT GOVERNOR said that, speaking for himself, the fee to be imposed in the port of Calcutta would be settled, as all such matters were, in communication with the leading members of the commercial community.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART said that there were two verbal amendments which it would be necessary to introduce before the Bill was passed: one was the omission of the words "at his discretion and" in the 7th line of Section 1. The Select Committee intended that those words should be struck out, but they had been allowed to remain by an oversight. The other amendment was the insertion of the words "at the port of transshipment," after the words "payment of duty" in the 13th line of the same Section. It would only be in the port of transshipment that the duty under this Bill would be payable: at the port of final destination the goods would be liable to the same duty as other goods.

The Motions were severally put and agreed to.

The Hon'ble MR. SHAW STEWART also moved that the Bill as amended by the Select Committee, together with the amendments now adopted, be passed.

The Motion was put and agreed to.

EXEMPTION OF VILLAGES (BOMBAY) BILL.

The Hon'ble MR. SHAW STEWART asked leave to postpone the presentation of the Report of the Select Committee on the Bill to exempt certain villages in the Bombay Presidency from the operation of the Regulations and Acts in force in that Presidency.

Leave was granted.

REGISTRATION OF BOOKS BILL.

The Hon'ble MR. HOBHOUSE asked leave to postpone the presentation of the Report of the Select Committee on the Bill to provide for the preservation of copies of books published in British India, and for the registration of such publications.

Leave was granted.

DISTRIBUTION OF BUSINESS PANJÁB COURTS' BILL.

The Hon'ble MR. BRANDRETH, in moving for leave to introduce a Bill to enable Deputy Commissioners in the Panjáb to distribute the business in subordinate Courts, said that there was an Act (XIX of 1865) called the Panjáb Courts' Act, Section 13 of which provided that every suit should be instituted in the Court of the lowest grade competent to try it. That was qualified to some extent by the following Section, which provided that the Deputy Commissioner might direct the business in the Courts subordinate to him, holding their sittings at the same place, to be distributed among such Courts in such way as he should think fit. What he wished to provide for was that the Deputy Commissioner might direct the business, not only in Courts holding their sittings in the same place, but in all Courts subordinate to him, whether holding their sittings in the same place or in any other. Those Sections of the Panjáb Courts' Act continued the same procedure as in Lower Bengal and the North-West Provinces; but they had been considered inconvenient and troublesome in the Panjáb. In the North-West Provinces and Bengal, the limits of the jurisdiction of the subordinate Civil Courts were determined by the number of Civil suits likely to be instituted: a rule, therefore, which required them to dispose of all suits instituted appeared appropriate. But in the Panjáb, the Tahsíl Courts were the Courts of the lowest grade, and their limits were determined with reference to the amount of revenue to be

collected. It was quite impossible that the Tahsíldárs could dispose of all the suits which might be instituted within those revenue limits.

Some years ago enquiries were made as to the relative proportion of Tahsíl work to be made over to the Tahsíldárs, and it was found that forty per cent. was the maximum. That scale was issued in accordance with the direction of His Excellency at the time he held the office of Chief Commissioner of the Panjáb. By that provision, the work was fairly distributed; the Tahsíl Courts were not over-burdened, and the Assistant and Extra Assistant Commissioners had their fair share of work. The primary work of the Tahsíldár was the collection of revenue, and in connection with that work, he had a great variety of work to attend to. That scale of distribution continued until the Panjáb Courts' Act, 1865, was passed. Since that time the civil suits had been instituted in the manner there directed, and consequently the Tahsíldárs had not been able to decide any thing like the number of suits instituted, and the undecided suits had to be transferred to other Courts, to the great inconvenience of the parties concerned. There was just as much necessity for limiting the institution of suits in the Tahsíl Courts now as before Act XIX of 1865 was passed. He would not ask the Council to trust his opinion only, but he had notes from two officers in the Panjáb competent to give opinions on the subject. One was from the Registrar of the Chief Court, who said—

"I don't think that the law which requires suits to be instituted in the Courts of the lowest grade is at all strictly carried out in the Panjáb. In fact it is impracticable to carry it out."

And then the Registrar went on to show how the limits of jurisdiction were fixed in the Panjáb, and went on to say—

"Hence, if all the cases under 300 rupees in a parganna are to be instituted in the Tahsíl Court, the influx of cases is far too great for the Tahsíldár to dispose of, and there must be a constant system of transfers, harassing alike to the Courts and to the parties; a rule, therefore, which may work well in Regulation Provinces is quite unsuited for the very different system in force here."

The second note was from Major McNeile, the Commissioner of Delhi, who, after describing the straits to which the district officers were put to dispose of the work, concluded by saying that "in all instances delay and trouble to the parties resulted from an institution in one place and a subsequent trial in another." If necessary, MR. BRANDRETH could produce the same testimony probably from every officer in the Panjáb. That no remonstrance before the Bill was passed was received from the Panjáb was attributed to the fact that the Bill as originally introduced was much less stringent than when passed. The

draft Act originally provided that suits of all descriptions should be instituted *ordinarily* in the Court of the lowest grade competent to try them, and the Deputy Commissioners would, in that case, have had the same power of transferring cases as before. The object of the Bill which he now asked leave to introduce, was simply to allow the Deputy Commissioner to distribute the business in the subordinate Courts in any way he might think fit.

The Motion was put and agreed to.

SPECIAL APPEALS (PANJÁB) BILL.

The Hon'ble MR. BRANDRETH, in moving for leave to introduce a Bill to amend the law relating to special appeals in the Panjáb, said that the object of this Bill was to get rid of the anomaly and inconvenience introduced by the Panjáb Chief Court Act No. IV of 1866, into the system of appeals in that Province. In order that the Council might understand the inconvenience of the present system of appeal, it would be necessary for him to explain fully what the former system was, and how that system had been modified by the Chief Court Act. The subject was uninteresting, but as it was one concerning the entire system of appeals in the Chief Court of the Panjáb, and was therefore one of some importance, he would beg the attention of the Council for a few minutes to what he had to say. He had here the Panjáb Procedure Code, the third Section of which related to appeals. The first clause of that Section provided that an appeal should lie to the Deputy Commissioner from the order of an Assistant Commissioner, Extra Assistant, or Tahsíldár, and to the Commissioner from the orders of the Deputy Commissioner. It had been made clear by a subsequent ruling, and had also been recognized in the Panjáb Courts' Act, XIX of 1865, which declared that the Assistants and Extra Assistants here referred to, from whose orders an appeal lay to the Deputy Commissioner, were officers exercising certain powers, as defined under that Act. Clause 4 of the Section of the Panjáb Code to which he had referred, provided that the Judicial Commissioner might admit an appeal from the orders of a Commissioner within three months, if special cause should be shown, or if any particular reason should appear. All the appeals there referred to were regular appeals, that was, appeals on which points both of law and fact might be taken under consideration. No provision had been made for special appeals as defined by the Code of Civil Procedure—Act VIII of 1859—a special appeal being, under that Code, an appeal, not on the facts of the case, but on the ground of the decision being contrary to some law or usage having the force of law. And that there was no such thing as a special appeal in the Panjáb was clear from a circular of the Board of Administration, issued in

1852, to the effect that appellate Courts should exercise plenary jurisdiction with respect to the merits in any case coming before them on appeal. The powers of the Judicial Commissioner regarding appeals had also been further defined in a circular dated 6th March 1859, which provided that, when the order of a Deputy Commissioner had been confirmed in appeal by the Commissioner, as a rule no further appeal would lie to the Judicial Commissioner. These orders, under the operation of the Indian Councils' Act, would have the force of law. No special appeal was therefore formerly known to the Panjáb; as a rule the only ground on which an appeal could be preferred to the Judicial Commissioner was that the Commissioner differed from the lower Court, and he was not sure whether, for a country like the Panjáb, where there were no pleaders to explain nice points of special appeal to the suitors, any better system of appeals could be devised.

He now came to the Panjáb Chief Court Act, IV of 1866. Section 17 of that Act provided that all special appeals preferred after the date on which the Chief Court was established, from the decrees of Civil Courts of whatever grade in the Panjáb, should be heard by the Chief Court only; and Section 18 provided that the proceedings in the Chief Court in Civil suits of every description should be regulated by the rules of Civil Procedure in force in the Panjáb. He must now explain in what manner the former system of appeals had been modified by the Chief Court's Act, and in what the anomaly and inconvenience he had spoken of consisted. The first question was, could a special appeal lie from a Court of first instance? The Chief Court of the Panjáb had not yet decided that question. In a communication addressed by the Registrar of that Court to the Government of the Panjáb, the Court remarked that "the use of the words 'all Courts of whatever grade,' in Section 17, seemed to raise a question whether a special appeal would not lie from the decision of a Court of first instance. Practically, unless the facts are admitted, and the matters of law in dispute have been separated from them, the case of a special appeal so preferred cannot arise, and it is in the opinion of the Judges desirable to reserve any decision on the point until the case occurs."

The second question was, supposing it were decided that the first appeal was regular, in which points of law and fact might be taken into consideration, how were second appeals to be disposed of? The Chief Court had disposed of this subject. He held in his hand the general rules for regulating the practice of the Chief Court in its appellate jurisdiction. Rule 18 provided that "a special appeal would lie to the Chief Court from all decisions passed in regular appeal by the subordinate Courts on the ground of the decision being contrary to law," and so on. Where material facts were in dispute, the appeal would lie

to the subordinate appellate Courts in their order of jurisdiction. And Rule 19 provided that "applications for the admission of appeals from the decisions and orders of Courts of the fourth and fifth grades," that was of Deputy Commissioners and Assistants with full powers, "including special appeals from the decisions of District Courts, should be presented to the Divisional Court. The Commissioner would forward to the Chief Court all special appeals to be heard in conformity with Section 17 of the Panjáb Chief Court Act." Now, whether Section 17 of the Chief Court Act had been correctly interpreted by the Chief Court; whether special appeals were created by that Section at all, considering that no such appeal existed under the former procedure; whether it might not be considered that such words as these in Section 17 "all special appeals preferred after the date on which the Chief Court is established shall lie to the Chief Court only" ought not to be regarded as having any present effect—those were questions on which it was not necessary for him to express any opinion. It was sufficient for him to show that the Chief Court had held that a special appeal had been created, and that such appeal lay to the Chief Court, in co-existence with another appeal on the facts to another Court. It was by no means clear, from the rule of the Chief Court, what was to be done when both points of law and fact were at issue, but the anomaly and inconvenience which must arise from a system of appeals in accordance with which one part of the same appeal had to be decided by one Court, and another part by another Court, were too obvious to need further comment. Before the Act was passed, the Judicial Commissioner of the Panjáb remonstrated against those Sections. The Hon'ble Mr. Cust, who was in charge of the Bill, mentioned to the Council that the Judicial Commissioner had remonstrated, but he did not state the grounds of that remonstrance: at all events, if those grounds were stated, they did not seem to have been recorded. Mr. Brandreth was not aware whether those objections were the same as the objections he was now urging. In regard to the provision which required the Commissioner to forward the appeal to the Chief Court, he would observe that it was not always easy to determine whether a special appeal lay or not. He knew that, as Commissioner of the Ráwal Pindí Division, which was the office he last held, his time was constantly taken up in sending appeals to the Chief Court on the ground that they were special appeals, and in receiving them back for trial on points of fact, a circumstance which would tend to the special confusion and inconvenience of the appellants.

There were three ways in which the confusion might be got rid of, and he had to consider which of those ways ought to be adopted. The first

way would be to introduce the entire appeal system of the Code of Civil Procedure, Act VIII of 1859. That system prevailed, not only in the Regulation Provinces, but in Oudh, the Central Provinces, and the Jhánsí Division—in fact in all the Provinces except the Panjáb. There was something therefore to be said in favour of introducing that system into the Panjáb. If that were done, the difficulty in regard to second appeals would at once be got rid of. On the other hand, the Lieutenant Governor of the Panjáb and the Chief Court had deliberately resolved on retaining the present system of appeals. The number of suits instituted in the Panjáb was equal to the whole number in Bengal, and double the number of suits instituted in the North-Western Provinces. Now, if the floodgates of special appeals in the Chief Court were once opened, perhaps fifteen Judges might be required to dispose of them, an expenditure which the Hon'ble Mr. Hobhouse would not like to provide for out of the funds which he hoped to expend in a more beneficial manner in improving the Courts of the lower grades. He (MR. BRANDRETH) could not therefore undertake to introduce that system on his own part. The next system was what was called the Panjáb system, under which no special appeals were allowed; if that system were adopted, the two Judges of the Chief Court might not have sufficient occupation; also the proceedings of the Council with reference to the passing of the Panjáb Chief Court's Act left no doubt that it was intended that a special appeal should in some way lie to the Chief Court. He could not, therefore, advocate that plan. The only remaining plan was merely to alter the wording of Section 17 of the Chief Court's Act to the extent to which he had referred. That could be done by providing that a special appeal should lie from the Court of the Commissioner only, and not from any other Court. The Bill could give, in the first instance, a definition of a special appeal, in which he proposed to go ahead even of Bengal and the North-Western Provinces, in taking the definition of a special appeal from Sir Henry Harington's new Code of Civil Procedure, instead of from Act VIII of 1859. The only provision of the Bill would therefore be that to which he (MR. BRANDRETH) had already referred, that a special appeal should lie to the Chief Court from the Court of the Commissioner only, and not from any other Court. That was the object of the Bill which he now asked leave to introduce.

The Motion was put and agreed to.

ADMINISTRATOR GENERAL'S BILL.

The Hon'ble MR. HOBHOUSE presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to the office and duties of Administrator General.

SARÁÍS AND PURAOS BILL.

The Hon'ble MR. RIDDELL presented the Report of the Select Committee on the Bill for the regulation of public Saráís and Puraos.

LICENSES' BILL.

The Right Hon'ble MR. MASSEY introduced the Bill for the licensing of Professions and Trades. He said he had had the advantage of revising the clauses of the Bill in consultation with some of his colleagues, and the result was that some of its provisions had been amended. It had been represented to him that the local taxation in some parts of the country bore rather heavily on the inhabitants, and that it would be desirable and equitable to exempt from the operation of this Bill those portions of the country in which taxes of a local description had been imposed for local objects. He was rather reluctant to make that concession, because it might have a tendency to confuse the limits between local and imperial taxation; but when it was considered that it was very desirable to encourage the objects for which those local taxes were imposed, he had been induced to consent to a sort of compromise. The result was that an amendment had been made in the Bill, which would enable the Collector, with the previous authorisation of the Governor General in Council, to make an abatement to the extent of the payment on account of local taxation of the same kind. Another question that arose was as to the mode in which profits should be taxed. The Bill provided for special taxation applicable to Joint Stock Companies. As originally drafted, it expressly applied not only to Joint Stock Companies, but to Trading Associations and private Partnerships of all descriptions, and declared that a person who was a member of a licensed Partnership should not be liable as such to pay separately on his own account; but when they came to apply that rule to partnerships of a private character, great difficulties presented themselves: those difficulties were very much attributable to the social and commercial relations of the Natives, and the mode in which they transacted their business, and questions of considerable nicety would constantly arise, as to whether persons were carrying on business separately, or as partners. It had been thought proper, therefore, to recognize no partnerships except Joint Stock Companies, and in order to effect that object, a clause had been inserted which he would read to the Council:—

"On and after the 30th day of April 1867, every Trading Company or Association in British India whose stock or funds is or are divided into shares and transferable, whether such Company or Association be incorporated or not, and whether the principal place of business of such Company or Association be situate in British India or not, shall take out a license and pay for the same such annual sum as is mentioned in Schedule B to this Act annexed.

Provided that, for any such license which shall be granted between the 1st day of November in each year and the 30th day of April next ensuing, there shall be paid only one-half of such sum. When such Company or Association shall have taken out and paid for a license as aforesaid, no person shall be deemed to exercise a trade within the meaning of this Act solely by reason of any share or interest in such Company or Association. All the other provisions of this Act applicable to individuals shall apply, *mutatis mutandis*, to such Companies or Associations."

The effect of that clause would be that no partnership except Joint Stock Companies would be recognized in that capacity, and therefore a member of a private partnership would pay in respect of his trading profits, but the partners would not be required to pay in addition in their aggregate capacity. That, he thought, would be considered an improvement on the Bill.

There were no other provisions which required particular notice. He would reserve any further observations until he had heard what Members had to say whether in regard to the Bill generally, or with respect to its particular provisions.

The Right Hon'ble MR. MASSEY having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The President declared the Rules suspended.

The Right Hon'ble MR. MASSEY then moved that the Bill be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. COWIE said that, at the conference on this Bill to which the Right Hon'ble Member had just referred, he had offered one or two objections to its details, and although he could not say that he met with any support, he would, with His Excellency's permission, repeat those objections in full Council.

He would first express his entire concurrence in the change which the Right Hon'ble gentleman had announced, whereby members of a firm would bear the tax individually instead of collectively. As a partner in a mercantile firm, he (MR. COWIE) would have felt ashamed if it had to contribute only £20 per annum to a measure of taxation like the present.

In his first objection to the Schedule, as he was both a trader and a taxpayer, he would at least get credit for sincerity, when he said that the scale of rating did not go high enough. Under the proposed Schedule, a millionaire banker or trader who made his lákhs per annum, whether by dealing in grain,

or cotton, or hundís, would be subject to an annual tax of two hundred rupees only, which he (Mr. Cowie) submitted was far too low. Without saying he ought to be taxed in proportion to his wealth, he submitted that, in such cases, rupees 500 per annum would be a very moderate tax. His second objection was the very reverse of the first, that the scale of taxation descended too low. Under clause 6 of Schedule A, a domestic servant, or artizan, or petty-trader earning the small sum of rupees seventeen per month would have to bear a tax of rupees four per annum. To such a person, that was a return to the provisions of the income tax,—a tax which found no favour either in that Council or out of it. Nay, it was worse than a return to it, for the Council would remember that, although the income-tax was originally levied on incomes down to rupees 200, these were, after two or three years' experience, absolved, and the minimum chargeable was made 500. Mr. Cowie then moved the following amendments separately—

1*st*—That a new class be introduced before class II of Schedule A, *viz.*—

"Persons whose annual profits shall be assessed at Rs. 25,000 and upwards ... Rs. 500."

2*nd*.—That class VI of the Schedule be omitted.

If he was so fortunate as to carry both amendments, though he was not competent to say what the financial result might be, he was much inclined to think it would give more to the Right Hon'ble the Finance Minister than the Schedule as it at present stood.

The Hon'ble Mr. Skinner said it could hardly be expected that a measure of that sort could be completely equitable without a system of enquiry and inquisition which it was desirable to exclude. The Bill was of limited application, but he thought wider limits might have been adopted, and he was quite of the opinion of the Hon'ble Mr. Cowie, that a class whose annual profits should exceed 10,000 Rupees and be less than 25,000 Rupees should be added, which he thought would bring in a considerable revenue. He had much pleasure, therefore, in supporting the amendments of his Hon'ble friend.

The Right Hon'ble Mr. Massey said, with reference to the Hon'ble Mr. Cowie's observations, he should on the part of Government accept the boon which Mr. Cowie was willing to offer them. If, in the opinion of that gentleman and the class which he represented, a fair tax was not provided in the Bill with reference to that class, he (Mr. Massey) would be happy to accept from them £50 instead of £20. If Hon'ble Members concurred, he would be very willing to consent to the addition of a class by which all persons whose incomes were 25,000 Rupees, and upwards should pay 500 Rupees. But he

could not accept that boon as a compensation for the loss of revenue which the Government would suffer by the removal of the last class, *viz.*, those whose profits varied from 200 Rupees to 500 Rupees. The Hon'ble Mr. Cowie had referred to the income tax, which, he said, commenced at incomes of 200 Rupees, but was subsequently abandoned as being oppressive. But he (MR. MASSEY) thought there was a wide difference between the mode in which the income tax pressed and the operation of this Bill. The income tax began at £20 at four per cent., and what was the effect of that? a payment of sixteen shillings against eight, just twice the maximum sum leviable under this Bill. The Hon'ble Mr. Cowie thought the scale went too low, but he (MR. MASSEY) should have thought that the objection would have been the other way. In local taxation of a similar description the point of departure was very much lower than in this Bill. He would refer also to the license Bill drafted by the late Mr. Wilson, which commenced with a tax of one Rupee. But it should be considered what persons were included in class 6 of the Bill—the man deriving an income, from the profits of his business, of from Rupees 200 to Rupees 500, and he was asked for four Rupees. That was a point far above the working classes of this country, and would not affect those who, it might be considered, ought not to be farther taxed. The object was that the tax should not fall on that great class who now bore the burden of the salt tax. An artizan, or servant of the superior class, who earned from Rupees 200 to Rupees 500 a year, was on the same scale as a workman in England earning from 35 to 50 shillings: the English workman had no immunity from taxation, and he never claimed any; he contributed to the Excise and Customs, which fell heavily on the labouring classes. In point of fact, with the exception always of artizans and servants of the lower class whose wages were under 200 Rupees a year, the working population of India were well able to pay four Rupees annually. The petty traders would in fact escape the tax altogether, as they would always charge it to their customers: the wealthier consumers and not the traders would pay the tax, and the same observation applied to the next higher class. Those classes were chiefly composed of traders who would get their tax out of their customers. He considered that any scheme of taxation calculated to bear only on what were called the rich would involve a principle of confiscation. If you recognized the immunity of what were called the poor, and declared that what were called the rich classes should be exclusively taxed, you would adopt a dangerous principle which he should be very sorry to introduce in this country. A tax commencing at an income of Rupees 200 stood entirely clear of what might be called the labouring classes. He took that point of departure, not on account of the title of the poor to be exempted from taxation, but because they were already

subject to a heavy tax, *viz.*, the salt tax. Therefore, considering that the poor contributed their fair proportion of revenue, and that the classes above them did not contribute at all, the Government were of opinion that those classes should be required to make a fair contribution. With these observations he trusted that the Council would support him in resisting the Hon'ble Mr. Cowie's second amendment.

The Hon'ble MR. COWIE asked if the Right Hon'ble Mr. Massey would meet him with this concession, to make the minimum profits on which persons should be taxed 300 Rupees instead of 200 Rupees.

The Right Hon'ble MR. MASSEY could not make the concession as the point had been well considered.

The Hon'ble MR. SKINNER suggested that the lowest rate of taxation might be reduced to two Rupees instead of four Rupees as it now stood.

The Right Hon'ble MR. MASSEY thought the sum sufficiently low as it stood.

The Hon'ble MR. RIDDELL appealed to the Right Hon'ble Mr. Massey against the concession made in favour of those paying municipal taxes, such a concession ought not on any principle to be made. For instance, a license tax, say in Calcutta, was now paid by every member of a legal firm, but not by any one drawing a salary. If, therefore, the concession were granted, not only would the municipal fund be benefited at the expense of the revenue, but one class would be benefited as against another. Persons drawing moderate salaries would suffer most; they were not liable to a license tax in the town, but they would be liable under this Bill. Those exercising trades would therefore in many cases be exempted. For example, a firm of four persons now exercising a legal profession would pay nothing, for they now each paid fifty Rupees to the municipality, which would amount to 200 Rupees, and they would therefore pay nothing under this Bill. Again there was an Act lately passed for the Panjáb to enable Municipal Committees to levy any tax they liked, and he did not think they would forego the opportunity of at once imposing a license tax within their respective jurisdictions, and thus forestall the Government.

The Hon'ble MR. MAINE said that the Section was so framed that the concession to which Mr. Riddell referred could not come into operation without the previous consent of the Governor General in Council, who would weigh carefully the arguments for and against it, in each case.

His Excellency the COMMANDER-IN-CHIEF said there was a strong argument in favour of the Hon'ble Mr. Riddell's statement, in what was mentioned

by the Right Hon'ble Mr. Massey, when resisting the second amendment of the Hon'ble Mr. Cowie—*viz.*, that one reason why the Government could not sanction the remission of the tax in the case of the 6th class was, that the small traders would in their dealings with their customers generally recover the greater portion, if not the whole of, the tax, which fell on them. HIS EXCELLENCY'S own opinion was that they would probably recover a great deal more than the amount of their tax. That seemed to him to strengthen the Hon'ble Mr. Riddell's argument, because people living on small fixed incomes, such as clerks, would have no such means of relief as traders. That was evidently a reason why such classes were exempted in the schemes of municipal taxation, and it appeared desirable that the Hon'ble Mr. Riddell's objection should be allowed its full weight.

The Right Hon'ble MR. MASSEY said that it was true, as observed by the Hon'ble Mr. Maine, that there was a discretionary power given to grant those concessions, but if that clause stood in the Bill, it would be impossible to resist any application for exemption to the extent of municipal taxation of a similar description; to do so would be throwing on Government an invidious responsibility which they were not inclined to assume. He had yielded with reluctance to its insertion, and was far from being convinced of the sufficiency of the plea in its behalf. Applications for exemption had at first assumed a much more formidable shape, for they had been asked altogether to exempt the Presidency towns. They could not make so large an exemption, but made a compromise by deducting from their contribution the amount the taxpayers contributed to existing license taxes. He had only to state the solitary reason which induced him to consent to the exemption as proposed now. Considering that money raised by local taxation was not squandered, but that it had been and would be spent in works of improvement and utility, such as sanitary objects, the formation of roads, and other things which it was desirable to encourage; and considering also that municipal taxation had been imposed at the express instance of Government, he thought that some case had been made out for a limited exemption. In that limited form, he was still willing to make the concession, and he hoped the Hon'ble Mr. Riddell would consent to the indulgence.

The Hon'ble MR. SHAW STEWART said that his vote on the Hon'ble Mr. Riddell's amendment would depend on the fate of the Hon'ble Mr. Cowie's first amendment. He (MR. SHAW STEWART) thought that, if the higher class of Rupees 500 licenses were imposed, his objection to the abatement of licenses on account of municipal taxation would be very much lessened.

The Hon'ble MR. RIDDELL still thought that the exemption ought not to be made, but he left it to the Right Hon'ble Mr. Massey to consider the propriety of doing so, and would not press his objection.

The Hon'ble MR. HOBHOUSE said it seemed to him that the possible exemption of those paying municipal taxes would operate in this way. When a person paid a particular municipal license tax, the exact amount of that tax, and no more, would be deducted from the Imperial tax, and the difference would be paid to Government. To take the case put by the Hon'ble Mr. Riddell, that when there were four persons, members of a legal firm in Calcutta, then the whole of the tax would disappear by the exemption; but he (MR. HOBHOUSE) did not understand the law in that way at all. Under this Bill, each of those persons would have to pay Rupees 200; so that only Rupees 200 out of Rupees 800 would be exempted. It did not seem that the whole tax would be lost, but only that portion paid to the municipality. It seemed fair that those persons who paid a license tax for a good purpose should be exempted to that extent. He would take another instance of the operation of the law in Calcutta. Under the third head of the first class of the Schedule, every Company would have to pay Rupees 500, and under the municipal law they would have to pay Rupees 100; it would seem hard that that Company should have to pay the Imperial tax in addition to the municipal tax when others would not. He should wish, before the Council quitted that subject, to know whether the terms of the Section "it shall be lawful for the Government to exempt" were considered to be imperative, and whether it was not intended that it should be so.

The Hon'ble MR. MAINE said that the terms of the Section were certainly not imperative.

The Hon'ble MR. COWIE's first amendment was then put and agreed to.

The second amendment was put and lost.

The Hon'ble MR. MAINE, with the permission of His Excellency the President, moved the following amendments:—

That the words "the list, or such part or parts thereof as he shall think fit, shall be filed" be inserted after the word "and" in line 8 of Section 11.

Also that the following words be added at the end of Section 20, *viz*, "but in determining under which of the classes mentioned in the said Schedule A any such person shall be assessed, the Collector shall take into consideration the amount of the pay which such person shall receive in respect of such office, employment or commission".

Also that class I of Schedule A be converted into Schedule B, and that the present Schedule B be called Schedule C.

The Motions were severally put and agreed to.

The Right Hon'ble MR. MASSEY moved the insertion, in the interpretation Section, of a clause to the effect that the word "profits" under this Act should mean the gross profits.

The Hon'ble MR. COWIE asked what would be the effect of that interpretation in the case of merchants and traders? A merchant made certain gross profits, but out of that he would have to pay establishment and other charges.

The Right Hon'ble MR. MASSEY thought that it would be impossible to get at a man's nett profits; to require that would be unfair to the Collector. But if the Hon'ble Mr. Cowie should say that, to tax the gross profits would be unfair, he would not press his motion.

The Hon'ble MR. COWIE certainly thought that the nett and not the gross profits should be the measure of taxation.

The amendment was then withdrawn.

The Right Hon'ble MR. MASSEY then moved that the Bill with the amendments adopted be passed.

The Motion was put and agreed to.

The Council adjourned till the 15th March 1867.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 8th March 1867.

Office Supdt. Govt Printing.—No 160 L. C.—15-3 67.—300.

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 15th March 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant Governor of Bengal, K. C. S. I.
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble H. Sumner Maine.
The Hon'ble Colonel Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble H. B. Riddell.
The Hon'ble E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble C. P. Hobhouse.
The Hon'ble J. Skinner.
The Hon'ble D. Cowie.

EXEMPTION OF VILLAGES (BOMBAY) BILL.

The Hon'ble MR. SHAW STEWART asked leave to postpone the presentation of the Report of the Select Committee on the Bill to exempt certain villages in the Bombay Presidency from the operation of the Regulations and Acts in force in that Presidency.

Leave was granted.

REGISTRATION OF BOOKS' BILL.

The Hon'ble MR. HOBHOUSE presented the Report of the Select Committee on the Bill to provide for the preservation of copies of books published in British India, and for the registration of such publications.

STAMP DUTIES BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill to amend the law relating to Stamp-Duties.

INDIAN SUCCESSION ACT, 1865, EXTENSION (STRAITS' SETTLEMENT) BILL.

The Hon'ble MR. MAINE said he must ask leave to withdraw the motion which stood in his name, that the Report of the Select Committee on the

Bill to extend the Indian Succession Act to the Straits' Settlement be taken into consideration. He was very sorry to do so, as he thought it would have been a gracious act of this Council, at the moment when the Straits' Settlement was about to be disannexed from India, to extend to that community, which lived under a modified form of English law, the best and most scientific simplification of that law which had been applied to any part of the empire. His Excellency, at MR. MAINE's suggestion, had telegraphed to the Secretary of State to know at what date the Straits' Settlement would be constituted a separate community. An answer had been received that the date would be the 1st of April next. But in the number of the *London Gazette* for February 5th which had been received by the last mail, MR. MAINE read an announcement, dated February 4th, that Her Majesty had been pleased to provide for the separate government of the Straits. It was possible that that announcement might not be inconsistent with the telegram that had been received. But until the actual Order in Council had been read, they could not be certain that the Straits had not been disannexed on February 4th, and hence, as all action *ultra vires* on the part of the Council was to be avoided, he could not ask them to pass the Bill. MR. MAINE begged to add that the extension of the Indian Penal Code to the Settlement had received the assent of the Governor General on February the 1st.

Leave was granted.

SARÁÍS AND PURAOS BILL.

The Hon'ble MR. RIDDELL moved that the Report of the Select Committee on the Bill for the regulation of public Saráís and Puraos be taken into consideration. He said the Select Committee had made no alteration of importance in the Bill, and he would not therefore trouble the Council with any remarks on the few changes that had been made. He wished, however, to mention that the Lieutenant Governor of the North-Western Provinces had expressed his satisfaction with the Bill, and stated that it would meet the requirements of those Provinces, as the chief object of the introduction of the Bill was to enforce the responsibility of *Bhatiárás* to report all deaths of persons occurring in Saráís and Puraos, many of which were supposed to be caused by means of poison.

The Motion was put and agreed to.

The Hon'ble MR. RIDDELL also moved that the Bill as amended be passed.

The Motion was put and agreed to.

DISTRIBUTION OF BUSINESS PANJÁB COURTS' BILL

The Hon'ble MR. BRANDRETH introduced the Bill to enable Deputy Commissioners in the Panjáb to distribute the business in subordinate Courts, and moved that it be referred to a Select Committee with instructions to report in a week. He believed he had said all that was necessary as to the object of this Bill on the occasion of asking for leave to introduce it. If his present motion were carried, he intended asking the Select Committee to make enquiries from the Governments of other Provinces, in which the limits of the jurisdiction of the subordinate Courts might have been determined with reference to revenue considerations, and not with regard to the number of Civil suits to be heard, as to whether power should be given to extend the Bill to those Provinces. He might add that he had received a telegram from the Registrar of the Chief Court of the Panjáb, stating that the Chief Court approved of the Bill.

The Motion was put and agreed to.

SPECIAL APPEALS (PANJÁB) BILL.

The Hon'ble MR. BRANDRETH asked leave to postpone the introduction of the Bill to amend the law relating to Special Appeals in the Panjáb. He said that he found that the Bill required further consideration before he could submit it for the approval of the Council.

Leave was granted.

MURDEROUS OUTRAGES (PANJÁB) BILL.

The Hon'ble MR. BRANDRETH also moved that the consideration of the Bill for the suppression of murderous outrages in certain districts of the Panjáb, be resumed.

The Motion was put and agreed to.

The Hon'ble MR. MAINE, in continuing the adjourned debate, would move an amendment which was not of great importance, but which would afford him an opportunity of describing the character of the measure. It did not appear to have attracted much attention, but MR. MAINE hoped that, whatever opinion had been formed on it, was not reflected in the only criticism he had read. It had been described in this criticism as an illustration of the extreme readiness of the Indian Government to license lawlessness. If the precisely opposite character had been attributed to it, and it had been called a signal example of the tenderness of this Government for law and legality, the description would have been more correct. Who were the persons to be

tried under the special procedure? They were persons who, under the influence of frenzy, but of perfectly controllable frenzy, either because they had made a vow, or supposed themselves to be discharging a duty, murdered others whom they had never seen before, without the smallest shadow of provocation. These murderers appeared not even to deserve that semblance of respect which was sometimes given great crime. An Hon'ble friend of his, who had served in the Panjáb, had repeated to MR. MAINE a conversation with an assassin who had been convicted of one of these fanatical outrages. He was asked why, calling himself a man, he had stabbed his victim in the back, and why he had not given him a chance of resistance. The answer was that that would never have done, because, in that case, he might have been killed himself, whereas his object was to kill and not to be killed. As, however, he had succeeded, he was perfectly willing that the Government should hang him. MR. MAINE would take upon himself to say that, if this sort of outrage had been committed in the most civilised portions of the world—let us say in the cities of London or Paris—and particularly if there were any reason to believe that the act was done upon a system, the murderer would have run much risk of being torn in pieces by the mob. If it had been perpetrated in places distantly resembling the Indus frontier, as, for example, the more westerly States of America, the life of the assassin would not be worth five minutes' purchase. If it had been committed in any Asiatic country—and he would not take a country under an Asiatic Government, but such a Government as that of the Dutch in Java, or of the English in Borneo—if it were the case (to take the nearest counterpart) of a Malay running amuck—the murderer would have been shot down by the first man with firearms in his hand who met him. These were the persons whom, under the present measure, it was proposed to try by a procedure differing in no essential respect from that of the ordinary law, except in the excision of the appeal. The appeal was perfectly useless, inasmuch as the evidence was always of the clearest character, and, indeed, the murderer himself always took care to supply the clearest evidence, for he never tried to escape, and, as in the case put by MR. MAINE, was perfectly prepared to be hanged. It was quite wonderful that people should not be able to throw themselves sufficiently out of surrounding circumstances, to see that the measure was a striking example of the desire of the Indian Government to impose legal order on its officers under the most trying conditions. As to the discussion which had taken place last week, it was to be observed that it had turned entirely on words. In the papers sent up from the Panjáb Government, the simple term *Gházis* was used for these assassins. If it had been employed, there would never have been a moment's doubt as to the class intended, and the word used would have been as clear as the term *Moplah* used in the series of Acts which

were passed to put down analogous crimes in Malabar. But this word *Ghází* had been discarded for a reason which MR. MAINE would venture to call not discreditable to that Council. While it was well understood that all respectable Muhammadan subjects of Her Majesty disclaimed sympathy with these murderers, it was felt that the word *Ghází* had not yet quite lost its honorific sense in their religious language, and that its employment as the designation of a class of criminals might be deemed offensive. The sole difficulty, therefore, had been created by the necessity of finding an equivalent for this term *Ghází*. The Select Committee had substituted the expression "political or religious fanatic, who murdered persons whose religion differed from that of the offender." The Lieutenant Governor objected to the last part of the definition on the ground that it was undesirable, where it could possibly be avoided, to base legislation on differences of religious opinion. MR. MAINE had himself objected to the phrase "political fanatic," partly because he was not sure what it meant, and partly because, if he was, he hoped all the Council were political fanatics. He would have himself preferred to retain the word "religious," but now that its omission had been carried, MR. MAINE did not think that the application of the Bill was altered. The primary and etymological meaning of "fanatic" was religious fanatic, and though the word was used in other senses, as, for example, in such expressions as fanatic in politics, or fanatic in art, MR. MAINE held that the employment was abusive, and only amounted to a metaphorical or analogical extension of the meaning of the word. Hence MR. MAINE thought that there must be some ingredient of religion in the frenzy of an assassin who was brought under this measure. As regarded his amendment, its object was this. In his opinion the appeal was quite idle, only necessitating the carriage of a mass of papers over some hundreds of miles of impracticable country, and thus causing a delay which was fatal to the prompt example which it was necessary to make for the sake of deterring future crime, and of affording security for life and limb to the officers employed on the border. But though the appeal would have been a useless addition to the careful procedure of this Bill the judgment of the Chief Court in deciding the appeal might not have been without value. The guidance which such judgment might have given to officers on the frontier, MR. MAINE proposed to give by circular orders.

MR. MAINE then moved the following amendment :—

"With the previous consent of the said Lieutenant-Governor, but not otherwise, the said Chief Court may from time to time make and issue circular orders for the guidance of officers in cases under this Act, provided that such orders are consistent with the provisions herein contained. All such orders shall be published in the official *Gazette*, and shall be obeyed by the officers aforesaid."

The Hon'ble SIR HENRY DURAND regretted that the objection which he originally raised to the use of the word "*Ghází*" had unfortunately caused so much trouble to the Council in connection with this Bill, but he was still of opinion that the word could not have been correctly used, and was not strictly applicable to the generality of the cases to which this Bill was intended to be applied. With regard to the frontier districts we might be said to be in a chronic state of armed truce, a watchful truce with hostility ever impending; and maintained towards frontier tribes notorious for the blood-feuds which raged among themselves. The crimes which sometimes took place, aimed solely at our officers, were really but another form, another exhibition of that spirit of fanatical vengeance which prevailed among the tribes inhabiting the border, and broke out frequently against ourselves. He need hardly, in addressing His Excellency the Viceroy, who knew the frontier districts so well, and who knew the bad feeling among those tribes, mention how difficult our officers found it to control them and prevent these outrages occurring among them. The very same class of offences which took place between man and man, of tribe and tribe, took place with respect to our own officers. Where a tribe would not, in a body, go against another tribe, or where political influences checked them, you would constantly find that individuals of that tribe, in working out the blood-feud existing between the tribes, would attack individuals of the other tribe against whom they had these feelings of vengeance; and it was really only the same thing which occurred in their attacks upon our officers. He therefore thought that "*Ghází*" was a dangerous and incorrect word to use, inasmuch as the outrage in many cases was not attributable to religious feelings. He looked on it, that when the assassination of a British officer took place in that way, it was often from the same motive that impelled a considerable body of a tribe to make a raid into our territories, kill men, plunder cattle, and carry off women and children. In one case it was by a band; in the other it was by a single assassin or two. But in either case it was the same spirit of fanatical vengeance that led to the perpetration of the crime. The word "*Ghází*" was primarily a strictly religious honorific term, in the same way as we applied the term "Crusader;" he therefore originally proposed to substitute the word "fanatic," or "fanatical assassin;" but without narrowing down to a mere religious sense the meaning of the word fanatic, as he thought the Hon'ble Mr. Maine wished to narrow it; for, for the reasons he had given, he did not think that the persons who committed those outrages were actuated by purely religious motives; and although he did not quite agree with the words used by the Select Committee, still he thought them not objectionable, inasmuch as they, to a certain extent, defined the word "fanatic," and gave it a certain scope by the use of the words political or religious applicable to the class of offences which were aimed at by the provisions of the Bill.

His Excellency the COMMANDER-IN-CHIEF would offer a few remarks on the Bill, more especially suggested by what had fallen from the Hon'ble Mr. Maine and Sir Henry Durand. It must be obvious that the motives by which the Government of India had been actuated had been properly described by the Hon'ble Mr. Maine. With regard to the nice distinction of terms drawn by Sir Henry Durand, HIS EXCELLENCY would submit that, perhaps, it was at present not important to press the analysis further, but he could not altogether agree with those remarks. In the first place, the idea of this Bill did not spring from the contemplation of acts solely caused by religious motives, but from the nature of the acts committed against our officers when performing a difficult duty on the frontier. He, in common with His Excellency the Viceroy, had had opportunities of particularly observing the effect of those acts, not only on the officers entrusted with the duty of keeping the peace, but also on the population of Peshâwur, and the tribes surrounding that valley. Whilst he agreed with Sir Henry Durand that it might be said in truth that our relation as to those tribes was one of armed truce, HIS EXCELLENCY thought it was even something more. The position of the British Government towards the tribes in that frontier was one of armed repression; they did not condescend to a truce, but enforced peace by putting down border crimes; for directly serious border crime was committed, it was punished by our arms in the field. He thought that whoever had lived there and witnessed the attacks contemplated by the Bill, would agree that they were perpetrated, not by the subjects of the Queen, but by her enemies; it was by men coming from beyond the border, and in nine cases out of ten those acts were not breaches of the peace, but acts of war against the British empire. It was such cases that we were called on to meet. As observed by the Hon'ble Mr. Maine, those men, whether actuated by political fanaticism as Sir Henry Durand seemed to think, or by religious fanaticism which it was the primary intention of the Mover to check, committed acts of hostility and war towards our officers, and it was incumbent on us to meet them in the only way in which they could be met, namely, by immediately striking down the offender with some such summary punishment as was provided by the Bill. If through the care and study of the Council they were able to accomplish that object without materially altering the law, if in this manner they could be saved from the adoption and proclamation of what was called Martial law, properly always viewed with jealousy, if they were able still to maintain the form of judicial procedure, and at the same time to protect the officers of Government, they would not only be performing a duty to those officers and the population they controlled, but also doing much to maintain the peace on the frontier. Nothing was more certain than that, if we did not give our officers and our agents the means of immediately striking down such crimes as those contemplated by this Bill, our officers

would ultimately not be able to prevent their soldiers and Police, and possibly the population, from taking the law into their own hands." He did not wish to say anything offensive to the Council, but he must observe that, during all the word-splitting that had taken place respecting the provisions of the Bill, he feared Hon'ble Members had lost sight of the primary object of the Bill as sent up by the Panjáb Government. They had been so beset by the necessity of strictly adhering to law as administered in peaceable districts, far away from such conditions of existence, that they had hardly been able to imagine the real state of things on the Panjáb frontier. Hon'ble Members who had opposed the Bill, could not conceive what it was to live in the midst of a population in which English gentlemen could not return from mess to their own houses without arms; where the whole cantonment, as at Pesháwur, was girdled with sentries and watched by mounted patrols. Chief Commissioners had been struck down in their own verandahs; commanding officers had been murdered in their own lines; a lady had been struck down at Kohat: such a state of things was not conceivable in a civilized country, and could only be considered to be a feature of but half-suppressed war and flagrant hostility. In ninety-nine cases out of a hundred such acts had been perpetrated by men from beyond the frontier. The attack on Major Adams was committed by a man who had been a resident of Pesháwur for four years, but it was found that he had originally belonged to a hostile tribe on the other side of the frontier. The apparent exception proved the rule. These acts were really committed by tribes in hostility with us, sometimes from political, and sometimes from religious motives, but more often perhaps from a mixture of the two, and that was the state of affairs against which the Council had to guard. He did therefore hope that the Bill would be passed.

His Excellency THE PRESIDENT said that, having taken a great interest in the subject of the Bill, he could not permit the occasion to pass without expressing an opinion founded on great experience of the people on the border and of their character, that the Bill was necessary both for the security of our officers, and the security of the people of the country themselves. Violent and barbarous, and even fanatical to a certain extent, as were those people, still their natural tendencies were to fair and open fight where they considered themselves injured, or thought they had a right to go to war; but the persons who engaged in such attempts on life as had been rightly stigmatized by his friend Sir H. Durand were truly assassins of the worst and vilest kind. There was no doubt that, while there was a certain amount of political feeling more or less mixed up with those attempts, nevertheless the great and prevailing feeling was that of religious enthusiasm, of religious passion. How often had it been proved that such men had for weeks and even

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months brooded over the attempts they had eventually made? They had in some cases been incited by their religious teachers, their *Mullahs* and other religious characters about their temples and shrines; and HIS EXCELLENCY thought that hardly any case could be adduced, whether it was an instance in which a Muhammadan assassin perpetrated a deed of this kind, or whether (as was much less frequently the case) it was a Sikh, in which the main ingredient had not been religious enthusiasm. He concurred in all that had fallen from the Hon'ble Mr. Maine. HIS EXCELLENCY had considered the Bill, so far, as a means of extending the right and power of our officers to inflict summary punishment, but he thought, moreover, that it was a measure which, while it invested the Government official with powers of dealing with an assassin, nevertheless, on the other hand, threw the force of law round his jurisdiction, and required him carefully to consider, in each case in which he proposed to bring, the particular individual under the scope of the law, whether his doing so was in accordance with the law. He thought that one effect of the Bill would be to give satisfaction to the loyal and well disposed population on the border. It would give confidence and security to our country; it would prevent our own officials getting into the practice of overriding the law, a practice which might perhaps result in their despising it; but if the Bill were passed, while they were acting rigorously in fact, they would feel that they were doing so in accordance with the law of the land.

The Hon'ble MR. BRANDRETH said he was obliged to the Hon'ble Mr. Maine for the amendments he had prepared, as they had remedied a part of the objections he entertained to the amendments which had been made in the Bill on the last occasion. He (MR. BRANDRETH) still thought it would have been better if the Bill had been restricted to the two classes recommended by himself, and if the word "fanatic" had been defined in the manner recommended by the Select Committee, which was so exactly in all material points in accordance with that recommended by the Lieutenant Governor and the Chief Court of the Panjáb. Whether the Chief Court and the Lieutenant Governor would now hold that the definition of the word, as explained by the Hon'ble Mr. Maine, was the only definition of which it was capable, he (MR. BRANDRETH) was not prepared to say. If, in the opinion of the Chief Court and the Lieutenant Governor, the meaning of the word "fanatic" as defined by the Hon'ble Mr. Maine was correct, and indicated a person actuated by religious motives only, any wider definition of the word would be inconsistent with the provisions of the Bill, and they might have to ask for an amendment of it; that was, in the event of their thinking that crimes committed from political motives only should also be made subject to the Bill. He (MR. BRANDRETH) could not now ask

the Council to go back from what they had already determined; but, as the next best thing, he was glad to accept of the Hon'ble Mr. Maine's amendment.

The Hon'ble MR. MAINE said that it would be very presumptuous in him to attempt to mediate between the opinions formed by His Excellency the Viceroy, the Commander-in-Chief, and Sir H. Durand, opinions formed by practical experience. MR. MAINE could not of course say of his own knowledge whether political or religious fanaticism predominated in the motives of those murderers, though he thought that the evidence rather pointed to the religious element. He would, however, make the remark, that his Hon'ble and gallant friend Sir H. Durand seemed to consider that MR. MAINE had been arguing on matter of substance, whereas he had been arguing on matter of words. All he had said was that, in his opinion, there must be some religious ingredient in the frenzy in order that an assassin might be brought under the measure. The result would be that, if there were any class who committed these murders solely under the influence of political motives, this Council would have to legislate again. MR. MAINE would however venture to express a suspicion that, in such cases, the political and religious motives were not easily disentangled, and that fanatical murders were very rarely committed on the frontier by persons in whose frenzy there was not some degree, however small, of religious enthusiasm, however the political motive might predominate. In such a case the murderer would be triable under the Act.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART said that there were two amendments that stood in his name, which he would move separately. The first was that Section 3 of the Bill be omitted, and that the following words be inserted in lieu thereof:—

"Every offence made punishable under this Act shall be deemed an offence within the meaning of the Indian Penal Code."

Apology was due to the Council for his having proposed no less than three successive amendments with the same object, but he thought a few words of explanation would relieve him from any charge of inconsistency. The first amendment, proposed with the object of preventing undue severity, was based on the difference of the religious belief of the murderer and his victim, which was the fundamental principle of the Bill as originally drawn. The amendments proposed and carried by His Honour the Lieutenant Governor made this amendment of no effect, and he (MR. SHAW STEWART) was obliged to withdraw it, substituting another by which the power of summary execution, without confirmation or appeal, was limited to actual murders; abetments and attempts being

left to be dealt with under the ordinary procedure. The debate on this amendment was adjourned, and a few days after, an informal meeting of the Members of Council who had served on the Select Committee was held, which unfortunately he was prevented by indisposition from attending. He was however informed by his Hon'ble friend Mr. Maine that the Members present at that meeting approved of his amendment and wished it carried further, so as to exempt all abetments from the operation of this Act. To this he willingly assented, especially as he should have preferred to have framed his amendment in its present form at first, and refrained from doing so only because he perceived that his Hon'ble friend, the Mover, was averse to omit Section 3, and he was not sure of the support of the Council. For this reason he framed his amendment in a form which would, he hoped, be accepted by his Hon'ble friend, but now, being sure of support, he had altered it as suggested by the Hon'ble Mr. Maine.

He need make few remarks in favour of his amendment; he objected to abetments being tried under this Act, not solely on account of the intrinsic difficulty of the law of abetment, but also on account of the comparative inexperience of many of the officers who would have to administer it, and the absence of any check to prevent an undue exercise of the extraordinary powers that the Act would give them. He said comparative inexperience not as any reflection on the officers themselves, but referring solely to the fact that offences under this Act would frequently be tried by officers of less standing in the service than those generally entrusted in other parts of India with the power of life and death.

The difficulty in the law of abetment lay in its defining an abetment to consist in an illegal omission as well as in an illegal act. He would read a portion of the first Section of the Chapter on abetment in the Indian Penal Code, which would make his meaning clear.

"A person abets the doing of a thing who instigates any person to do that thing."

And instigation was explained as follows:—

"A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing."

Again—

"A person abets the doing of a thing who engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing."

And thirdly—

"A person abets the doing of a thing who intentionally aids, by any act or illegal omission, the doing of that thing."

In all these three cases, an illegal omission or a wilful concealment was mentioned, and he was of opinion, and he thought his Hon'ble friends Mr. Brandreth and Mr. Hobhouse, whose judicial experience was far greater than his, would bear him out, that it was most difficult and required great knowledge of the law to know what facts a person was bound to disclose, and what omissions were illegal. Perhaps he might be permitted to mention, as an instance of this difficulty, that no person, except a public servant whose duty related to such cases, was legally bound to give information of an offence so grave as murder, even if he knew that the withholding of this information might lead to the escape of the criminal. That at least was the law of the Code of Criminal Procedure, and though he was aware it was modified in certain districts by local laws, yet the very fact of these modifications existing made it all the more difficult to say what was, and what was not, an illegal omission. But the difficulty was greatly enhanced in regard to abetments of the offences that would be punishable under this Act, for, as these fanatical murders were generally committed by foreigners residing beyond our frontier, their abettors would for the most part reside out of British India also, and in the event—which was not impossible—of a number of such persons charged as abettors being arrested and brought before our tribunals, very difficult points would arise as regarded jurisdiction, as well as whether they had violated any duty binding on them to disclose facts or prevent the commission of an offence. For this reason, he trusted the Council would concur in the propriety of the amendment, and exclude all abetments from the operation of this Bill. The words which he proposed to substitute would have the effect of making all abetments or concealments of offences against this Act equally penal, under the Indian Penal Code, as abetments or concealments of ordinary offences and triable by the Code of Criminal Procedure.

The Hon'ble MR. BRANDRETH said that, if he thought that abetment of the crime contemplated would be of frequent occurrence, he should have strongly objected to the amendment. A person who instigated an offence, who planned and designed the execution and furnished the means of perpetrating it, might be more deserving of punishment than the person actually committing the offence. Suppose a case of abetment of that sort were actually made out? the officer who tried the case would probably not hesitate to set aside the proposed amendment, as other officers in similar cases had set aside the Criminal Pro-

cedure Code. Such an officer might justly argue that the amendment was altogether inapplicable to the case he had to deal with, and would reasonably expect that his act would be justified by the Government of India and the Secretary of State. But as he (MR. BRANDRETH) thought abetment would be of very infrequent occurrence, he did not wish to oppose the amendment, if it was quite certain that, instead of that taking place which the Hon'ble Mr. Shaw Stewart expected, the amendment would not have the effect of bringing every kind of concealment as well as abetment under the procedure provided by this Bill.

The Hon'ble MR. RIDDELL hoped he would be allowed to protest against the remarks of His Excellency the Commander-in-Chief. The discussion which he presumed was intended to be alluded to was, whether the term "fanatic" should be used alone, or in conjunction with the words "political and religious." He thought, from what they had heard from His Excellency the Viceroy and the Hon'ble Mr. Maine, that the Council would be satisfied that there was great doubt as to the meaning of the word. He (MR. RIDDELL) thought that it would turn out that the term "fanatic" did not include the very class of persons intended to be brought within the operation of the Bill. If the Hon'ble Mr. Maine was correct and some religious motive must be proved, then, no case of assassination for revenge would come under the provisions of this Bill. He (MR. RIDDELL) thought the Council would do wrong in following a barbarous nation, and permitting a summary jurisdiction in these cases instead of having a solemn formal investigation. He could not help protesting against the term word-splitting as applied to their discussions by His Excellency the Commander-in-Chief.

The Hon'ble SIR HENRY DURAND said that, with reference to the amendment, as the Hon'ble Mr. Brandreth who was in charge of the Bill made no objection, he (SIR HENRY DURAND) would only remark that he had very considerable doubt whether the Bill as amended would effect the object desired. The act of abetment would be much narrower than the application which the Hon'ble Mr. Shaw Stewart gave to it. No doubt the Hon'ble Member was perfectly correct so far as the definition under the Penal Code was concerned; but with reference to the crimes to which this Bill would apply, the act of abetment was almost the same as the act of assassination. He (SIR HENRY DURAND) had therefore considerable doubt whether the proposed amendment should be made, but as the Hon'ble Mr. Brandreth did not object, he (SIR HENRY DURAND) would not do so.

The Hon'ble MR. SHAW STEWART begged to observe, with reference to the remarks of his Hon'ble friend Sir H. Durand, that any abettor who was

present at the commission of a murderous outrage, and therefore liable to be viewed as a red-handed criminal, would be liable to be tried as a principal in the offence, under the summary procedure that this Bill provided. His (MR. SHAW STEWART'S) amendment would only affect the case of persons at a distance from the scene of the offence, who might instigate or aid the offender or engage in a conspiracy with him. Such persons could not be considered in the light of red-handed criminals, and the necessity of summary procedure in regard to them was not apparent.

His Excellency the COMMANDER-IN-CHIEF having taken a prominent part in supporting the principle of the Bill, would not give a silent vote on the present amendment. He was disposed to accept the amendment, first, because it made the Bill entirely consistent with the idea of it, as stated by the Hon'ble Mr. Maine, and, secondly, because he was advised that, whereas the red-handed criminal should be punished and made an immediate example of for the better preservation of the peace amongst the friends of the murdered man and the population at large, still there was no such necessity in the case of a mere abettor, according to the Hon'ble Mr. Shaw Stewart's definition. Therefore, as it had been said over and over again, as this was a piece of exceptional legislation, it appeared to HIS EXCELLENCY that the Hon'ble Mr. Shaw Stewart was right in proposing his amendment; and thus preventing the exceptional legislation going any further than what was required. With regard to the Hon'ble Mr. Riddell's remarks, HIS EXCELLENCY thought that they were a little out of order, as they applied to a previous debate. Far indeed was it from HIS EXCELLENCY'S wish to cast an invidious reflection on any Hon'ble Member, but he had thought it a duty to take care that Hon'ble Members should not forget the necessity under which the Bill had originated in the Panjáb and had come up to the Supreme Government. It was due, not only to the Council, but to the public at large, that the scope and idea of the Bill should be thoroughly understood according to the terms used by His Excellency the Viceroy, which far exceeded in weight any thing he was able to urge.

The Motion was put and agreed to.

The Hon'ble MR. MAINE moved that the following new Section be added to the Bill:—

"It shall be lawful for the said Lieutenant Governor, either on his own motion or at the request of the Chief Court of the Panjáb, from time to time to withdraw any class of cases from the operation of this Act."

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART then moved that the following Section be added to the Bill:—

"This Act shall expire in ten years from the date of passing it."

And, as suggested by His Hon'ble friend Mr. Maine, he proposed to add the words—

"Or at any earlier date that the Governor General of India in Council may order."

This Bill proposed to legalize a course of procedure that had been adopted in many cases without the sanction of law, and which was expected to aid materially in the suppression of a class of offences which had unfortunately been somewhat common of late years in the Panjáb. If in the course of a few years the Bill succeeded in its object, and these outrages were suppressed, there could be no longer any necessity for such an exceptional law, and if unhappily it was not found to succeed in this object, he thought it right that this Council should have the opportunity of reconsidering the matter, and judging whether the Bill was advantageous or not.

The Hon'ble MR. BRANDRETH said that, considering the extraordinary powers conferred by this Bill, it would perhaps be as well that it should be subject to reconsideration ten years hence, and if not required, it would be well if the compiler of the Acts at that time should be able to leave it out of the Statute-book.

The Motion was put and agreed to.

His Honour the LIEUTENANT GOVERNOR moved the introduction of the following new Section after Section 8:—

"The proceedings in every trial held under this Act shall be reported to the Lieutenant Governor, without unnecessary delay, by the officer before whom such trial shall have been held."

He said, the object of the amendment which he had proposed was to impose on the officer trying a case under this Bill the legal obligation to do that which he would most likely do without such an obligation, namely, to report his proceedings to the Government. But it seemed to him that the legislature, in trusting these large powers to comparatively young officers, should take the precaution of making it legally obligatory on those officers to report their

proceedings, in order that mistakes might be corrected, and that the necessary instructions might be issued to regulate their procedure.

The Motion was put and agreed to.

The Hon'ble MR. BRANDRETH then moved that the Bill as amended by the Select Committee, together with the amendments since adopted, be passed.

The Motion was put and agreed to.

PETTY SESSIONS (NORTH-WESTERN PROVINCES) BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill to remove doubts as to the legality of certain sentences passed by tribunals called Petty Sessions Courts, in the North-Western Provinces, said that the Council were aware that, in those Provinces, Honorary Magistrates (generally Native gentlemen) were in the habit of sitting together and passing sentences in concert, somewhat after the fashion of the English Quarter Sessions. The practice was said to have the best effect. But as the whole system of Indian Criminal Procedure was founded on the assumption that the Court was composed of a single Judge or Magistrate, doubts had been raised by the High Court of the North-Western Provinces as to the legality of the sentences so passed. He therefore proposed to preclude these doubts and to legalize, retrospectively, sentences heretofore passed, by a short Bill which enacted that:

"When two or more persons, authorized to exercise all or any of the powers of a Magistrate, sit together for the despatch of business in any place in the said Provinces, any summons, warrant or process or other proceeding, and any order, judgment, finding or sentence, signed by any two or more of them, shall be as valid to all intents and purposes as if it were solely signed, when the powers of one or more of them are higher than the powers of the others or other of them, by such one of them as has, or by one of such of them as have, been invested under Section 23 of the Code of Criminal Procedure with the highest of such powers, or, when their powers are equal, by any one of them."

And that—

"All sentences heretofore passed by any Magistrates sitting together in any such place as aforesaid, shall be deemed to be as valid as if this Act had then been passed."

The Bill was extremely simple, and it would be unnecessary to refer it to a Select Committee. At their next meeting, therefore, he proposed, with His Excellency the President's permission, to ask the Council to pass the Bill through its remaining stages.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to enable Deputy Commissioners in the Panjáb to distribute the business in subordinate Courts—The Hon'ble Messrs. Maine, Shaw Stewart, Hobhouse and the Mover.

The Council adjourned till the 22nd March 1867.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (*Legislative*).

CALCUTTA;
The 15*th March* 1867.

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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 22nd March 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Honour the Lieutenant-Governor of Bengal, K. C. S. I.
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Colonel Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble C. P. Hobhouse.
The Hon'ble J. Skinner.
The Hon'ble D. Cowie.

ADMINISTRATOR GENERAL'S BILL.

The Hon'ble MR. HOBHOUSE moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to the office and duties of Administrator General, be taken into consideration. He said that he thought the best way of explaining what the Select Committee had done in regard to this Bill, would be to take in their order such amendments as the Select Committee had made, and explain them one by one. The first amendment was in Section 2, and was comprised in the repeal of Act XXVII of 1860, "except as to Hindús, Muhammadans and Buddhists, and persons exempted under the Indian Succession Act." Act XXVII of 1860 was an Act for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased Hindús, Muhammadans "and others not usually designated as British subjects." The provisions of that Act, except as to Hindús, Muhammadans and Buddhists, had been virtually repealed by the Indian Succession Act, 1865, but it was obviously desirable to make that repeal express.

The next amendment was in Section 6, in which it was stated that every person hereafter appointed Administrator General should be a member of the Bar of England or Ireland, or of the Faculty of Advocates in Scotland, and should be of not less than five years' standing. The alteration in this Section consisted in the omission of the words "of not less than five years' standing," as these words might possibly preclude persons who were well fitted for the office from accepting the appointment.

The next amendment was in Section 12, and what was new in it was this, that in the case of a petition when the Administrator General had no personal knowledge of the facts therein stated, the petition might be subscribed and verified by any competent person, and if such person should make a false statement he would be liable to be proceeded against as for perjury. The next Section in which an amendment had been made was Section 15. What was new in that Section was contained in the clause "The Administrator General shall be deemed to have a right to letters of administration in preference to that of any person on the ground of his being a creditor, *a legatee other than an universal legatee*, or a friend of the deceased." The effect of that was, that an universal legatee should continue to be preferred to the Administrator General. In the Bill as it originally stood, the word "legatee" was simply used, but that included an universal legatee, who, being an executor according to the tenor, should certainly be preferred to the Administrator General. In Section 16, there were two or three amendments, the first of which was contained in the words of the person who had died "shall have left assets exceeding *at the date of the death or within one year thereafter*, the value of *one thousand* rupees," then, in such a case the Administrator General could come in: it very often occurred that, at the date of the death, the assets were small, but that shortly after other assets came in, and swelled the original assets to the amount at which the Administrator General was required to come in and administer the estate. The next alteration was with reference to the period within which the Administrator General would be entitled to take out letters of administration as against all comers. That period was at present one month, but the Select Committee had thought proper to extend it to three months. He (MR. HOBHOUSE) thought that he should not discuss here the reasons for this change, because he found that notice had been given of two amendments on the subject, and when those amendments were proposed, it would be best to consider once for all the effect of this clause. The next amendment was in the first part of Section 27, which ran thus:—

"Whenever the Administrator General shall declare a dividend among such creditors of the deceased as have proved their debts, and shall notify the payment of such dividend by

advertisement in the official *Gazette*, no creditor of the deceased who shall not previously to such declaration and advertisement have proved his debt, shall be entitled to participate as such in the assets wherewith such dividend shall be made."

The practice he understood was this. When the Administrator General administered to any estate, he issued a notice that he had done so, and creditors were called on to come forward with their claims as soon as possible; one year was allowed to ascertain all the liabilities of the estate, and a general dividend was made amongst the creditors who had come forward and proved their claims; but it often happened that certain negligent creditors who had not come forward within the time allowed, did so afterwards, and disturbed the whole arrangement with reference to the estate. Suppose, for instance, a dividend of one thousand rupees each was declared to five creditors out of an estate, and that some of them had taken their dividends: now if another creditor came in, he would disturb the whole arrangement. He (MR. HOBHOUSE) thought that ample notice had been given, and that if persons did not choose to come in within the time allowed, they should not be permitted to share in the funds with which the dividend had been declared: of course, if sufficient assets came in afterwards, such creditors would take their shares as well as any body else. The next amendment was in Section 33, which was very like the corresponding Section of the former Act, except that it went further. In the Section as it first stood, it was provided that, if any person who had a claim on an estate sued the Administrator General in any Court other than a High Court without having first submitted proofs of his claim to the Administrator General, such suitor even if he got a decree, should not be entitled to enforce it. The reason for exempting the High Courts was that in such Courts the Administrator General could institute an administration suit and thus put a stop to the proceeding. But the Select Committee thought there was no reason why a creditor who had not taken the usual course of submitting and proving his claim should be allowed to go to the High Court, and put the estate to great expense and the Administrator General to much trouble in defending the suit: such person should not be entitled to get any benefit over the other creditors. They had further enacted that—

"If in any such suit judgment is pronounced in favour of the plaintiff, he shall nevertheless be only entitled to payment out of the assets of the deceased *pari passu* with the other creditors."

The intention was that a person should not, although he brought a suit, take more than he was entitled to, and that he should be paid in the same proportion as other creditors. The next alteration was in Section 34. As the Bill originally stood, when the assets of an estate were below five hundred

rupees, and the deceased died intestate, the Administrator General was entitled to issue a certificate instead of taking out letters of administration: that provision was now to apply to estates whose assets were not more than one thousand rupees and even to cases where the deceased had left a Will. When estates were of such small value, it was found that after payment of the ordinary funeral expenses, the costs of administration or probate, servants' wages, and so on, there was nothing left to administer; it seemed better, therefore, for all parties not to burthen the Administrator General with the charge of such small estates, but to enable him to issue certificates in such cases. The next amendment was in Section 53. Under that Section as the Bill originally stood, the Governments of the Presidencies of Fort Saint George and Bombay had the power, with the sanction of the Governor General in Council, from time to time to lower, and again to raise, the amount of commission that the Administrators General of those Presidencies respectively might take: that commission could never exceed five per cent. which it was at present, but it might be desirable hereafter to lessen the amount of commission and again to raise it. Now, as it was probable that owing to the operation of the Succession Act and other causes, the sums received by the Administrator General of Bengal might so far be reduced that a commission of three per cent., the amount at which it now stood, would not enable the Government to procure the services of a person of sufficient standing to undertake the important functions of that office, the Committee had given the Governor General in Council a power analogous to that vested in the Governments of Madras and Bombay, and enabled him to raise the commission receivable by the Administrator General of Bengal to any rate not exceeding five per cent., and again to reduce it. Section 64 was entirely a new provision. It would be in the memory of the Council that, by the provisions of this Act, the Administrator General of Bengal could administer to any estate other than that of a Hindú, Muhammadan and the like, whether the person had died in the North-Western Provinces or the Panjáb, in Oudh, or the Central Provinces. It might be objected to this that the European population of these territories would so increase that a Deputy Administrator General should be appointed for the North-Western Provinces, Oudh and the Central Provinces, and possibly also for the Panjáb. Section 64 accordingly empowered the Governor General in Council to appoint a Deputy Administrator General, who would be under the jurisdiction of the High Court of the North-Western Provinces or the Chief Court of the Panjáb, as the case might be. Those were, he believed, all the essential provisions of the Bill as amended by the Select Committee to which he thought it necessary to draw the attention of the Council.

The Hon'ble MR. BRANDRETH said there was one point on which he should wish to ask a question. By the existing law, a residuary legatee was preferred to the Administrator General, but by section 15 he found that the preferential right was given to the Administrator General. That appeared an important alteration of the law, of which, as far as he had seen, no explanation had yet been given to the Council. Moreover, such preference of the residuary legatee was conferred by the Indian Succession Act, an Act which had been often eulogized by the Hon'ble Mr. Maine as a piece of most exemplary legislation. No provision in such an Act ought to be set aside unless there was reason to believe that it was not well considered. By the Bill, as it stood before it was amended, even a universal legatee was set aside in favour of the Administrator General: he wished, therefore, to ask whether the claims of the residuary legatee had been well considered, and on what grounds they were set aside.

The Hon'ble MR. MAINE said that the Council would understand the case was that of a legatee who was not one of the next-of-kin. It was undoubted that the residuary legatee was in theory understood in a peculiar manner to represent the testator, and that view was intelligible at a time when, in practice, the residuary legatee was the principal legatee. Nowadays, the position formerly attributed to the residuary legatee was to a great extent a fiction. In a very large number of cases, perhaps in the majority, the particular legacies exhausted the great bulk of the personalty, and the residuary legatee was only appointed to sweep up the little that might remain. The Committee had discarded the fictitious privilege of the residuary legatee, but had continued in his former priority the universal legatee, who might certainly be said in a special manner to represent the deceased.

The Motion was put and agreed to.

The Hon'ble MR. MAINE moved that, in sections 16 and 22, the words "one month" be substituted for "three months." He said he moved it now inasmuch as on this amendment hinged his further amendment and also that of Mr. Cowie. He would endeavour to state the relation of the amendments to one another and to the existing law. Until the law should be altered by the present Bill, if a person belonging to certain classes died in India, then, if no executor had applied for probate, and (in the case of intestacy) none of the next-of-kin had applied for administration at the expiration of a month from the death, the Administrator General must take out administration and enter upon the property of the deceased. On such of the property as he realised, he was entitled to a certain commission. If, however, within six months, probate or letters of administration were granted to some other person

by the High Court, the powers of the Administrator General would be revoked, and he would be ousted from the possession of the assets, retaining, however, his commission. It was probably unnecessary to explain to the Council that this period of one month during which the property was left vacant, so far as the Administrator General was concerned, was originally fixed with reference only to British India. The time was supposed sufficient for executors and next-of-kin resident in India to come in and take out probate or letters of administration. It probably never entered into the ideas of the framers of the Act that the property of the deceased should be left to take care of itself until executors or next-of-kin in England could be communicated with. But facilities of communication with England had increased, and the Select Committee had altered the period of one month to three, under the idea that this was about the time in which intelligence of the death could be conveyed to England and instructions received therefrom. This decision was arrived at by the Committee on a petition from the Chamber of Commerce at Madras. It would not be unjust to the petitioners to say that they were actuated by regard, though not by an unjustifiable or unreasonable regard, to their own private interests. Most of them were doubtless members or agency firms. Now the case of an executor or one of the next-of-kin coming out in person to India to administer, was of extremely rare occurrence, if it ever occurred at all. What practically took place was this. The executor or next-of-kin employed an attorney or agent here, who took out probate or administration in his name. Of course this agent, so constituted representative of the deceased, made a charge for his services. It was thus the agency firms which really competed with the Administrator General. It was even said that some of them, which had branches or principal places of business in England, actually kept lists of the next-of-kin of their constituents, and on intelligence of a death being received, applied for permission to act as attornies of the person entitled to probate or administration. There was nothing immoral or dishonourable in the proceeding, but it struck MR. MAINE as somewhat undignified, and he should be surprised if his Hon'ble friends at the other end of the table did not disclaim any connection with the practice. On these representations, however, the majority of the Select Committee introduced the period of three months. On the other hand, a very respectable body, the Trades' Association of Calcutta petitioned in the opposite sense. They stated that it was an injury to them, in, their capacity of creditors, that the property should remain virtually vacant for so long a period as three months. It was true that, under sections 17 and 18, the Administrator General might enter, and might be compelled to enter, on an order of a High Court, if waste or misappropriation or (if the amendment of his Hon'ble friend Mr. Hobhouse should be carried) deterioration, could be

established by sufficient evidence. But evidence on the point which would satisfy the Court had to be procured, and though there might be even a presumption under this climate of the deterioration of that kind of property which was becoming most frequent, plantations and so forth, nevertheless, from the distance and other difficulties, it might not be easy to satisfy the High Court of the fact.

So, then, stood the case—the agency firms in their own interest petitioning one way, and the Trades' Association, representing the class of creditors generally, petitioning the other. MR. MAINE'S own amendment proposed a sort of compromise, and in submitting it, he would state the principle on which it rested. He could only admit that, in regard to the distribution of a dead man's assets, two questions could be asked; first, what did the dead man himself desire? secondly, what was best for the interests of the persons concerned in the distribution of his estate, as legatees, next-of-kin or creditors? As regarded the first question, MR. MAINE admitted that the fullest effect must be given to the dead man's wishes. If he had left a Will, it should be acted upon, even though it should be true that, in particular cases, it would be better that the estate should be distributed rather by the Administrator General than by the executor who had been named. When, therefore, there was a Will, MR. MAINE was content to discourage the Administrator General from entering, to the extent contemplated in his amendment, which provided that the Administrator General when superseded by an executor within three months, should not retain his commission. But Mr. Cowie's amendment applied the same principle to an administrator, and this MR. MAINE was prepared to resist. He hoped that the Council would bear with him while he described from the pages of the greatest authority on the subject the nature of the office of an administrator—

This is the original of administrators, as they at present stand. They are the officers of the Ordinary appointed by him in pursuance of the Statute, and their title and authority are derived exclusively from the ecclesiastical Judge, by grants which are usually denominated letters of administration.

Such a functionary had no resemblance to an executor, who was recognized in every part of the law as the delegate of the testator for the purpose of carrying out his wishes. The administrator was merely the officer of the Ecclesiastical Court, or of the Court which inherited the powers of such Court; and he was an officer of a very rude and barbarous kind. The fact was that for a long time the Ecclesiastical Court retained, on behalf of the ecclesiastical power, the assets of intestate persons as against the creditors. This privilege it was compelled by an old Statute of the reign of Edward III to renounce, and having been compelled to distribute the personalty among the family, t

had no expedient to adopt except that of selecting one of the next-of-kin or a creditor or a friend of the deceased as its officer, and to compel him to do his duty by the rude device of exacting security. The point, therefore, being established, that the private administrator was a mere officer of the Court, MR. MAINE could not for a moment admit any moral right on his part to enjoy priority over a great public officer appointed for the special purpose of administration. Nor was that all.' Suppose the question to be asked as to the probable wishes of the deceased person? It might be perhaps assumed, though the assumption was not always correct, that the dead man wished his property to be distributed among his family. But, on the point which of his family was to conduct that distribution, there were simply no materials for forming an opinion. It might be guessed, if conjecture was admissible, that he would have selected the best man of business among his next-of-kin to act as his representative. But it was in the highest degree unlikely that the arbitrary rules of selection observed by the Ecclesiastical Court would single out the person best fitted for the office of administrator. But when the other question came to be asked—what arrangement was best for all concerned?—MR. MAINE had no hesitation as to the answer. He hoped his Hon'ble friends would excuse him for speaking frankly; but he felt that in this case he was not simply backing his own opinion, but maintaining the cause of the whole European community in India, and of those connected with it at home, and of the whole body of creditors. Take the two modes of administration. In the one case the private administrator was necessarily not in India, for otherwise he would have entered within the period of one month. He very rarely came out to administer, but practically, in the great majority of cases, employed an agency firm to represent him. This firm was of course remunerated for its trouble by a percentage, which was usually, at all events, not less than that charged by the Administrator General. But then, what followed? The agent was not necessarily learned in the law, and when difficult questions arose, he was placed in the somewhat painful position of having to discharge, without advice, a duty which he had taken upon himself for a pecuniary consideration, or of having to delegate it to a firm of solicitors. MR. MAINE had no hesitation in saying that the proper course was for the agency firm to avail itself of legal guidance; and thus a second set of expenses was incurred. The questions arising might be of unusual difficulty, particularly in the case of devolving trusts, and thus the process might end in an administration suit in the High Court, which of course would entail still further expense. Now take the other side. The Administrator General in the first instance would be a barrister, and presumably appointed for his capacity. More than that, he would be a barrister devoting him-

self to one line of business, and would therefore become an expert in the law of intestate and testamentary succession. He was at the head of a great office, constantly employed at this particular business, and would very rarely require assistance from without; and for all this one commission, and one only, would be charged. MR. MAINE therefore had the strongest conviction that an estate in the hands of the Administrator General was realized and distributed, from first to last, vastly more safely, vastly more cheaply, and vastly more expeditiously than by the agent of a private administrator resident in England. Nor was it unworthy of observation that, while the mistakes in law of the Administrator General fell on himself, those of the agency-houses were visited on the unfortunate principal at home. MR. MAINE would not disguise from the Council that if he could have his own way, he would go even further than his present proposal. He would give the Administrator General preference over all private administrations. Many and great inconveniences were to be traced in England to this rude practice of private administration. No doubt, with the vast mass of property devolving at home, it would be a strong thing to create a great body of Administrators General. But here in India the class affected was comparatively small and manageable, and easily brought within the system of operation of the various Administrators General. We had much better avail ourselves to the utmost of the advantage we enjoyed, than curtail the powers of this most useful functionary. MR. MAINE would conclude by saying that the Council would observe he was, so far as possible, maintaining the existing law. It was the Select Committee that had proposed to alter the law, and it was on its members that the burden of proof rested of the necessity of any such alteration.

The Hon'ble MR. COWIE said he was not a member of the Select Committee which considered this Bill. If he had been, he should have entirely concurred with the votes of the majority which, he understood, were in favour of the three months' clause. At the same time he readily admitted that that extension of the time in which the Administrator General might come in was not required in Bengal, for both the present Administrator General and his predecessor had always been most reticent in taking charge of estates when any intimation had been given them that a Will was in existence, or that next-of-kin were about to apply.

But we had it on good authority that this had not been the case in a neighbouring Presidency, where the Administrator General had been in the habit of seizing (if he might use the word) estates where duly authorized representatives were on the point of appearing. Now, he did not think we ought to make laws which left it to a public officer's conscientiousness or courtesy

whether he should use them as an engine of oppression or not, and he must therefore vote against the amendment. As the Hon'ble Mr. Maine had in some degree mixed up the two amendments and spoken upon both, he (MR. COWIE) might take the liberty of doing the same. The Hon'ble gentleman's second amendment had his support as far as it went, but it did not go far enough. It was confined entirely to the case of probates, and ignored letters of administration. He thought the experience of Members of this Council would show how common was such a case as this:—a man died intestate in India, leaving assets in Government Securities in a Bank where there was no probability of deterioration or misappropriation. His widow in England lost no time in sending out power for administration to a relative, friend or an agent, but she found that the assets had been taken possession of by the Administrator General, who, before he would give them up, would mulct her in commission, to the extent of one and a half per cent. in Calcutta, or two and a half per cent. in Madras or Bombay. Now he asked the Council if that was just or reasonable. He need not, however, rely on the strong case of a widow. The deceased person might have left a father in England, who would be his sole heir-at-law, and the charge he had described would fall with great injustice upon him if the Hon'ble Member's amendment became law. The Hon'ble Member was of course aware that the majority of administrations here were granted to the attornies of absent executors, and it was a theory of Judges of the High Court and of the Administrator General, that such administrators undertook all the responsibilities and trusts which the testator had laid upon his executor. He could not then understand why the Hon'ble Member desired to draw so strong a line between executors and administrators.

The Hon'ble MR. HOBHOUSE said he had listened with great attention, and with every desire to be convinced by the arguments adduced by the Hon'ble Mr. Maine in favour of his amendment, but he (MR. HOBHOUSE) was certainly not convinced by those arguments. Of course there could not be a doubt that, in the respects he had mentioned, the Administrator General was, ordinarily speaking, fitter to look after the estates of deceased persons than most people were, because the Administrator General was a person with legal knowledge, and who had an establishment whose duties were to administer to estates, and who knew those duties thoroughly; the Administrator General also gave security for the due performance of his functions, and was under certain penalties for misconduct. Now take the case of another officer, the Official Trustee. There was a Bill introduced by the Hon'ble Mr. Maine, and passed in 1864, relating to Official Trustees. Under that Act, the Official

Trustee was enabled to act in the place of other trustees who had made a settlement of the affairs of the trust and transferred the trust to him. The Official Trustee was in the same position as the Administrator General: he was an officer with the requisite legal knowledge; he had an establishment accustomed to the duties; he gave security, and was under penalties for misconduct, and he was, therefore, a person more fit to manage settlements and trusts than anybody else. Yet nobody thought of extending the powers of the Official Trustee so as to prevent other persons from acting in the management of private trusts. He (MR. HOBHOUSE) would deny that the Administrator General was the very best person to administer to estates; he was a public servant and had a public office; but there were also certain disadvantages attendant on his administration of an estate. The private affairs of every person in the world would not bear strict investigation; there were many things connected with a man's family affairs which he might not wish to be known; but if the administration of an estate went into the hands of the Administrator General, every thing became known to a public officer and his establishment, and ran the risk of being made public. Then as regarded the assets of an estate, the Administrator General would know nothing about them; but a private agency firm, or the deceased person's solicitors, would know all about that person's affairs; the deeds, documents, &c., were all known to a man's solicitor, and he was therefore a better person than the Administrator General to administer to the estate. Then it was said that the Administrator General had more knowledge of the law of intestacy and testamentary succession than any other person. That was possible, but ordinarily speaking, he (MR. HOBHOUSE) was told that, in the great majority of estates, there were no very great legal difficulties to be dealt with; that the administration was confined to simple matters of the transactions of every-day life, which were put in the hands of a private agent or family solicitor to deal with, and such a person was more competent to manage such affairs than the Administrator General.

Then with regard to waste, the provisions of the Act, with the amendment regarding "deterioration" of which notice had been given, were quite sufficient. Under Sections 16 and 17 of the Bill, the Court, of its own motion or on the application of any relative or friend, or of the Administrator General, when it was proved that there was danger of waste or deterioration, might put the Administrator General in charge and he would then be entitled to his commission. Those provisions seemed quite sufficient to prevent waste. It was said that if you did not take out administration to an estate within one month, the creditors suffered, but he (MR. HOBHOUSE) did not understand that. The

creditors would in any case have to wait a year, for the Administrator General could not make any payments before the expiration of that period; and if three months were allowed for an executor, or the next-of-kin, to come in, the creditors would only have to wait two months longer.

Taking the principle of the objection raised to private administrations, he (MR. HOBHOUSE) thought that every person had a right to manage his own affairs. It was true that a person who died intestate had not stated who was to be his executor, or what was to be done with his property. But take the case of an intestate who died leaving his father him surviving. From the moment of that person's decease, the property was the father's; but you said that he must employ the Administrator General to administer to the affairs of the deceased: surely this was an interference with private rights which the Council ought not to sanction. The present Act stated that certain persons might have a preference if they came in within one month, but persons in England or elsewhere out of the country could not come in within one month, and why should there be a distinction between persons living in England and persons who were resident here? The principle was that anybody who was entitled should come in: the Committee were not therefore acting against that principle when they asked that one month should be changed into three months for the benefit of a numerous class of persons in England, *viz.*, the relatives of persons in this country. That being the view of the case which he (MR. HOBHOUSE) took, he must think that either the three months' clause should be retained, or what was better, that the Hon'ble Mr. Cowie's amendment should be carried. Under that amendment, administrators resident here would come in within one month, and persons at home would come in within three months: that would be the practical effect of the amendment, and he (MR. HOBHOUSE) preferred it to the provision of the Bill as it now stood. But anyhow he preferred the three months' clause, as recommended by the Select Committee, to the amendment of the Hon'ble Mr. Maine.

The Hon'ble MR. TAYLOR said that he was aware that there was much to be said on both sides of this question, and while holding the views of his Hon'ble friend Mr. Hobhouse, he was nevertheless prepared like him to be convinced by the arguments of his Hon'ble friend Mr. Maine in the opposite sense. He had listened attentively to all that had been said by the speakers who had preceded him, and he was bound to say that the weight of argument appeared to him to be on the side of his Hon'ble friends Messrs. Hobhouse and Cowie, and he was consequently unshaken in his previous opinion. He failed to discover any valid reasons why the office of the Administrator General should be protected like a monopoly. He was unable to perceive on what grounds of justice

or expediency persons should be denied the privilege of disposing of, or managing, their property otherwise than through the agency of a public officer. There were many reasons why persons would wish their estates to be wound up by their agents in preference to a public officer. Their agents were often their private and most intimate friends, and, as remarked by Mr. Hobhouse, they were already acquainted with all their affairs. The question then arose—Was it, or was it not, better for the general interests that both executors and next-of-kin should have the right of claiming probate or letters of administration in preference to the Administrator General? The law already allowed the privilege, the right was conceded to them by the existing Act: but the period of one month after death, at the expiration of which the Administrator General was empowered to take proceedings, was too short to enable executors out of India to exercise that right. On what principle, he would ask, should absence from India operate to debar a widow, a son, or a father, from the exercise of a privilege which was allowed to those who were close at hand? Had such executors or next-of-kin been resident in India, their claim would have been preferable, without any dispute, to that of the Administrator General, it was therefore *primâ facie* preferable wherever they might be, and reasonable time should be allowed to them to prefer their claim.

His Hon'ble friend Mr. Maine would restrict the privilege to cases where a Will was produced and probate taken out. But the claims of the next-of-kin were undeniable even in the absence of a Will, and could not in justice be set aside. For these reasons he was in favour of the extension of the period from one to three months as proposed. The office of Administrator General was one in the thorough efficiency of which the public was deeply interested. His position was on the whole very much improved by the amended Bill; he (MR. TAYLOR) would be very sorry to advocate any measure which was calculated to impair the efficiency of the office, or which would have the effect of materially diminishing its emoluments. But he did not think that the extension of the period after which he was now entitled to act would have that effect. Were it likely to be otherwise it would then be matter for consideration whether the Administrator General should not be paid a fixed salary and the fees credited to Government, an arrangement which might possibly be the most satisfactory to all parties.

The Hon'ble MR. GREY said that the Hon'ble Mr. Maine's argument, which had had so little effect on the Hon'ble Mr. Hobhouse, seemed to him (MR. GREY) so thoroughly convincing that he should not have thought it necessary to do more than give a silent vote, but for his desire to call the attention of the Council to one point which might be overlooked, the fact, namely, that what was now proposed was an alteration of the law in force for the last twelve years. He

therefore thought that a very strong case ought to be made out to alter a law with regard to which no complaints had been received, except one which was made in general terms by some merchants in Madras. Of the merits of that he knew nothing. Even the Hon'ble Mr. Cowie admitted that, on this side of India, there was no occasion for the alteration of the law. It appeared strange, therefore, that an alteration so very material should have been adopted by the Select Committee without giving any essential reason for the change. It seemed to him (MR. GREY) that the Hon'ble Mr. Cowie and the Hon'ble Mr. Taylor had rather ingeniously mixed up two quite distinct matters—administration by an executor, and administration of an intestate estate. The latter only was really in question now; and the point was whether, in the case of an absent next-of-kin, it was preferable for the estate and the heirs generally, that such next-of-kin should employ a public officer like the Administrator General, or that he should be at liberty to employ any private agent of his own. The Hon'ble Mr. Cowie and the Hon'ble Mr. Hobhouse had quoted some cases to show the harshness of forcing the estate into the hands of the Administrator General, but of course the cases put were very exceptional, when there was only one person entitled to administer to the estate. Generally there were several such persons. Take for instance the case of a man dying and leaving a son and several grandchildren. That son, as next-of-kin, might come in and get administration, but there was nothing at all to show that the estate in his hands would be safer, as concerned the interests of the grandchildren, than in the hands of the Administrator General. MR. GREY'S own opinion was very strong that, in the case of an intestate estate, especially where the next-of-kin was an absentee, it was better for the public interests generally that the estate should be put into the hands of the Administrator General.

The Right Hon'ble MR. MASSEY had listened to the discussions without much previous consideration of the subject, but he must say that the reasoning of the Hon'ble Mr. Maine had satisfied him as to the expediency of the course he proposed to follow. Looking at this question from an English point of view, he (MR. MASSEY) could confirm the statement that the tendency of the best informed opinion at the present day was decidedly in favour of withdrawing these duties from private individuals, and vesting them in skilled and responsible public officers. The expense and confusion that had arisen from private persons intermeddling in trusts, the inextricable difficulties in which estates had been involved from not having been at first placed in the hands of a public officer, had been proved by the experience of so many unhappy years that it was now the opinion of many lawyers that the time had arrived for changing the system entirely, and that no discretion should be allowed, either

in the case of trusts or intestacies, but that the execution of trusts and the administration of intestates' estates should be vested in a public department. That was a much more extensive proposition than was contained in the Bill before the Council. We had here an officer whose knowledge and capability were undoubted, who had a special establishment for the administration of estates, and whose duties had been performed satisfactorily. It had been said that private parties ought to be allowed to come in and intermeddle in administrations. But, as Mr. Maine had said, this depended on the answer to two questions: first, what did the dead man expressly desire? secondly, what was best for the interests of the persons entitled to his assets? In the case of intestacies, there could be no contention as to the will of the deceased, because he had not expressed it, and, apart from the statute, the only claim of the next-of-kin to administer was derived from his presumed knowledge of the personal property and affairs of the intestate, and his desire to distribute that property amongst the kinsmen of the deceased. Some person was selected to administer, but he might have no knowledge of the affairs of the deceased, and he might have no means of ascertaining the assets of the estate. It was clear that persons possessing or knowing of assets belonging to the estate of the deceased would be by no means so ready to inform a private administrator, as a public officer, of the direction his enquiries should take in order to ascertain those assets. There were other persons besides those who would take under the Statute of distributions, there were creditors, and they would no doubt prefer the administration of a public officer to that of a person of whom they knew nothing—an officer whose whole time was given up to the business, who was furnished with official machinery, and who could with promptitude and accuracy discharge all the duties of an administrator, in a far preferable manner to any casual who might be appointed in the ordinary way, and whose duties were discharged by his private solicitors. The private solicitor might be a respectable and conscientious man, and familiar with the affairs of the deceased, or he might be neither one nor the other. If this came to be a question between the public officer and the unknown private administrator, his (MR. MASSEY'S) vote would be given to the public officer.

The Hon'ble MR. SKINNER did not wish to discuss the advantages of public or private administration. The Administrator General could no doubt administer to an estate so as to give satisfaction to all persons concerned; but he could also administer so that his administration might prove a burthen to the persons interested in the estate. Whatever might be the opinion as to the merits or demerits of administration by a public officer, it seemed to him (MR. SKINNER) that the question for the consideration of the Council was, as to whether any ground had been made out for denying to private persons the option of availing themselves of private administration, or administration by a public officer,

as they might think best. The object was not so much to benefit the Administrator General or the public generally, as to give parties their option. He (MR. SKINNER) did not think that three months was too long a time to allow an absentee to come in and take out letters of administration, and would therefore vote against the amendment.

The Hon'ble MR. SHAW STEWART said that, as regarded the question whether the duties connected with the administration of intestate estates could be best carried on by the Administrator General or by the next-of-kin, he thought the Council should not judge the question entirely from at English point of view. They had here a peculiar means of administration, *viz.*, the great houses of agency, who stood in the position of private friends of most of their constituents; and he was not prepared to admit that anything had been shown to satisfy him that the Administrator General would administer better than those houses of agency. One part of the Hon'ble Mr. Maine's argument bore out the opinion that he (MR. SHAW STEWART) had just expressed, for it showed the care that the agents took in looking after the interests of their constituents. He did not think that the circumstance of the agents keeping lists of the next-of-kin of their constituents was at all an argument against those agents; on the contrary, he rather thought that this showed what interest they took in the affairs of their constituents. The Administrator General had no such record to assist him. For these reasons he (MR. SHAW STEWART) was of opinion that it would be better to allow three months as proposed in the Bill.

The Hon'ble MR. MAINE said that his Hon'ble friend Mr. Cowie had somewhat misunderstood him. He (MR. MAINE) had never meant to imply that an agent who made a mistake through an error of law would not be exposed to very disagreeable consequences. What he had meant to say was that the principal at home would not be protected. He must remind the Hon'ble Mr. Skinner that they were not discussing the powers of executors, who were true delegates of the deceased, but of administrators, who were officers of the Ecclesiastical Court, chosen on a barbarous and exploded system. The question before the Council was of the simplest kind. Would they give private administrators a new advantage over the Administrator General? A private administrator was at best a relic of a barbarous age, and was selected almost at haphazard, and in the present case he was resident thousands of miles from the theatre of his duties. Would they prefer him to a skilled public officer, surrounded by every sort of safeguard, and in the long run charging to the estate a considerably less commission than was charged by the private administrator? It was not he himself, but his Hon'ble friend Mr. Cowie and the Select Committee, who proposed to change the law, and against this change

he (MR. MAINE) protested in the name of the whole body of creditors. It was for his opponents to show what there was in a private administrator which entitled him to precedence over the Administrator General.

The Motion having been put, the Council divided—

AYES.	NOES.
His Excellency the President.	Hon'ble Mr. Taylor.
His Honour the Lieutenant-Governor	Hon'ble Mr. Shaw Stewart.
	Hon'ble Mr. Hobhouse.
His Excellency the Commander-in-Chief.	Hon'ble Mr. Skinner.
	Hon'ble Mr. Cowie.
Hon'ble Mr. Maine.	
Hon'ble Mr. Grey.	
Right Hon'ble Mr. Massey.	
Hon'ble Colonel Sir H. Durand.	
Hon'ble Mr. Brandreth.	

So the Motion was carried.

The Hon'ble MR. COWIE then moved that the following clause be added to section 26:—

"Provided that, in any such case, when the deceased has left a Will appointing an executor, and probate of the Will has been granted by any Court in the Presidency to such executor within three months after the death, or when the widow or next-of-kin has, within one month, if resident within the Presidency, or within three months, if resident beyond the Presidency, obtained from any such Court letters of administration to the estate and effects of the deceased, then and in either of such cases the Administrator General shall (without prejudice to the provisions contained in sections 17 and 18 of this Act) not be entitled to receive or retain any commission out of any assets belonging to such estate and situate within the jurisdiction of the Court by which probate or administration shall have been granted as last aforesaid.

He said that, in putting his own amendment, he had but little to add to what he had already stated. Both the Hon'ble Mr. Maine and the Hon'ble Mr. Grey appeared to ignore the fact that administration was constantly granted by the Court here to the representatives of absent executors, and although these powers were technically called letters of administration, they were for all practical purposes probates. Yet they were entirely untouched by the Hon'ble Mr. Maine's amendment. He should not have desired to speak in that Council in any other capacity than as a member of it, but the Hon'ble Mr Maine had so pointedly alluded to the Hon'ble Mr. Skinner and himself as agents who acted as administrators, that he might be excused in making the following very brief remarks.

The Hon'ble gentleman recorded his opinion that the duties of an administrator were performed far better by a public officer than by a private agent. He had a perfect right to entertain that opinion, but it was incontestable that the public both here and in England did not share in it. There was in many quarters a very strong feeling against the employment of an Administrator General.

The Hon'ble Member referred to a practice in home agency firms of searching out next-of-kin of deceased persons in India, in order that letters of administration might be procured by their corresponding firms here. The Hon'ble Member might have peculiar sources of information, but for himself he could only say he never heard of such a practice.

The Hon'ble MR. MAINE could not accede to the amendment, which differed from his own in depriving the Administrator General of his commission, not only when the executor, but when the private administrator supervened.

The Motion having been put, the Council divided—

AYES.	NOES.
His Honour the Lieutenant-Governor.	His Excellency the President.
Hon'ble Mr. Taylor.	His Excellency the Commander-in-Chief.
Hon'ble Colonel Sir H. Durand.	Hon'ble Mr. Maine.
Hon'ble Mr. Brandreth.	Hon'ble Mr. Grey.
Hon'ble Mr. Shaw Stewart.	Right Hon'ble Mr. Massey.
Hon'ble Mr. Hobhouse.	
Hon'ble Mr. Skinner.	
Hon'ble Mr. Cowie.	

So the Motion was carried.

The Hon'ble Mr. MAINE said that, Mr. Cowie's amendment having been carried, his (MR. MAINE'S) own fell to the ground.

The Hon'ble MR. HOBHOUSE moved that the word "deterioration" be inserted after the word "misappropriation" in sections 17 and 18. He said that, in this country, it often happened that property was wasted, not so much by actual waste or misappropriation, as by deterioration from the effects of climate. It seemed wise, therefore, that on proof of such deterioration, the

creditors should be enabled to direct the Administrator General to take out probate or letters of administration either within one month or three months as the case might be.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE moved that the Bill as amended by the Select Committee, together with the amendments since adopted, be passed.

The Motion was put and agreed to.

REGISTRATION OF BOOKS BILL.

The Hon'ble MR. HOBHOUSE moved that the Report of the Select Committee on the Bill to provide for the preservation of copies of books published in British India, and for the registration of such publications, be taken into consideration. He said that the Bill as amended by the Select Committee bore on the face of it the appearance of considerable alteration; but as a matter of fact there were no material alterations introduced in the law of the land generally. It was considered advisable, when the Bill was being considered in Committee, to repeal and re-enact in the Bill a cognate law on the subject of printing-presses and the registration of periodicals, and also to provide that, on the payment of the usual fee, that registration should be a registration of copyright also. It would therefore be observed that sections 3 to 8 of the amended Bill were simply re-enactments of Act No. XI of 1835 relating to printing-presses and periodicals; and that sections 12 to 15 were also repetitions of the same law, but in these latter sections there had been an amendment of some value. Under Act No. XI of 1835 a person guilty of infringement of the Act was liable to fine and imprisonment; but that was considered a very severe penalty, and in accordance with the provisions of the Penal Code it had been altered to fine *or* imprisonment, or both. What was new in the Bill with reference to the registration of books was little. He would first draw attention to the interpretation-clause, in which the word "book" originally included newspapers; but it was thought that, if the Government were compelled to take three copies of every newspaper published in India, there would be no room in the Government Library to place the enormous amount of books (as interpreted by the clause) with which the Government would be flooded. The word "book" had therefore been defined to include, not newspapers as before, but merely "every volume, part or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart, or plan separately printed or lithographed." That would also exclude from the Government Library such trifling things as price-lists of books, auctioneers' catalogues and so

on, which the Government did not wish to have. As regarded the registration of books, there was a material alteration in section 9, for which he (MR. HOBHOUSE) had prepared the Council on the last occasion on which he addressed it on the subject of the Bill, *viz.*, that the person who should be required to deliver the books to the Government should not be the publisher, but the printer; and by this section the printer could compel the publisher to assist him to the extent required to enable him to deliver to Government three copies of the book published. If the publisher had to deliver the books, the Act must be a dead letter, because, in most cases, it was extremely difficult to find who the publisher was, whereas the name of the printer was very easily discoverable, as he was bound to register his press, and to put his name to every book that he printed. Section 16 referred to the catalogue of books to be kept. The words of this section to which he (MR. HOBHOUSE) would draw attention, were to be found after clause 14 of the section. That section described what the memorandum was to contain, and then said that every registration under this section should, upon payment of two rupees, be deemed to be an entry in the Book of Registry kept under Act XX of 1847, that was, the Copyright Act. It had been thought that, as persons would be bound to present and register their works, such registration should also entitle them to copyright, if they chose to pay two rupees, as they now did, for that privilege. There was another section, 22, by which the Act, instead of being confined to Bengal, was extended to the whole of India, the Governor General in Council having by a previous section the right to exclude any class of books he chose, and to continue the Act only so long as he considered requisite. The Act was a very light one, and would be of much benefit to printers and publishers; and if there was any necessity for the Act at all, the same reason applied to the other Presidencies as well as to Bengal.

The Hon'ble MR. MAINE said that Mr. Riddell had appended to the report of the Select Committee an objection to the incorporation of Act No. XI of 1835 with the present measure. His Hon'ble friend was not here to explain at large his reasons for so objecting; but MR. MAINE supposed that he considered the enactments to be scarcely *in pari materiâ*. MR. MAINE did not agree in that opinion; but among other strong reasons for the amalgamation of the enactments was one derived from the limited application of Act No. XI of 1835. Although that measure, in describing the sphere of its operation, spoke of itself as applying to all the territories in the possession of the East India Company, the present Advocate General, Mr. Cowie, had advised the Chief Commissioner of Oudh, and (MR. MAINE held) rightly, that it only applied to such territories as were possessed by the East India Company in 1835.

The true doctrine was that Acts of Parliament gave the law to British India in whatever manner British India might be constituted thereafter; but that Acts of the Governor General in Council, which employed language similar to that of the enactment under consideration, only applied to British India as it existed at the time being. MR. MAINE, however, in examining the papers in the Foreign Office, had discovered a letter addressed to his Hon'ble and gallant friend Sir H. Durand when Commissioner of Tenasserim, in which the Government of India committed itself to the opinion that Act XI of 1835 was in force in British Burma. And hence MR. MAINE could not help suspecting that many acts had been done illegally in the subsequently acquired territories, in the *bonâ fide* belief that the Printing Act was then in force.

Such acts, being innocent in themselves, deserved an indemnity, and hence the Select Committee had introduced the provision in Section 2, that—

"In any territory acquired by the East India Company or Her Majesty since the passing of the said Act No. XI of 1835, such Act shall, so far only as regards acts, punishments and fines purporting to have been done, inflicted and levied thereunder, be deemed to have been in force from the date of such acquisition up to the date of passing this Act."

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

STAMP DUTIES BILL.

The Hon'ble MR. HOBHOUSE moved that the Report of the Select Committee on the Bill to amend the law relating to stamp-duties, be taken into consideration. He said that he had dwelt so much at length on the occasion, first of asking for leave to introduce the Bill, and afterwards of introducing it, that he did not propose now to go into any other details except such as had been amended by the Select Committee. He would therefore take up the Bill section by section, and would state what the amendments were that the Select Committee had introduced. The first amendment would be found under Article 2, Section 6 of the Bill. Perhaps he should first state that, in Section 4, there had been an amendment of the Code of Civil Procedure, which provided that certain stamp-duties should not be maintained, but as those duties would be levied under this Act, it was thought necessary to repeal that provision. Article 2 provided an addition to certificates granted under Act XXVII of 1860 in the words "or under Regulation VIII of 1827 of the Bombay Code, or Act XL of 1858." The Bombay Regulation was the cognate law to Act XXVII of 1860, and so also was Act XL of 1858, for

making better provision for the care of the persons and property of minors in Bengal. Act XXVII of 1860 and the Regulation of the Bombay Code referred to the collection of debts on successions and the recognition of administrators, and Act XL of 1858 referred to the case of the property of minors. Certificates under those Acts were liable to stamp-duty under a separate provision, and they had now been placed under the same Article as Act XXVII of 1860, and the stamp-duty had been very slightly increased, *viz.*, from four to five rupees, to facilitate calculation under the decimal system. The next amendment was in Article 3. The words of that Article ran thus :—

	Rupees.	Annas.
"Copy of decree or order having the force of a decree—		
When passed by the High Court	4	0
When passed by any Civil Court other than a High Court or by any Revenue Court—		
If the decree or order purports to determine a claim of which the subject-matter is 50 rupees or less than 50 rupees in amount or value"	0	8

* * * * * *

So again in Article 4—

"If the subject to which the judgment or order refers is 50 rupees or less than 50 rupees in amount or value" ...	0	4

. . * * * * * *

And so in Article 10—

"When [the petition or application is] presented to any Civil Court other than a principal Civil Court of original jurisdiction, or to any cantonment joint Magistrate sitting as a Court of civil judicature under Act III of 1859, or to any Court of Small Causes constituted under Act XI of 1865, or to a Collector or officer of revenue, in relation to any suit or care in which the amount or value of the subject-matter is less than 50 rupees"...	0	1

That was in accordance with the recommendation of the Stamp Commission, but by some omission this recommendation was not put into the Report. The members of the Select Committee on the present Bill were also taken into consultation at the later sittings of the Stamp Commission, and a large number of the members of the Council were members of that Committee, and they urged the imposition of the stamp-duties mentioned, there being no reason why some stamp should not be taken on petitions and on applications in suits under fifty rupees in value.

The next point was the wording of the conditions under which certain complaints before the criminal Courts would be liable to the stamp-duty of one rupee which had already been so much discussed. According to the wording of

Article 10, petitions or applications having reference to complaints would only be liable to stamp-duty when they involved complaints of the offence of wrongful confinement or wrongful restraint, or of an offence for which the Police might not arrest without warrant. Offences for which the Police might arrest without warrant, were all offences of the most heinous nature, such as robbery, dacoity, and so on, which told on the public generally, and not so much on private persons. On the other hand, the offence of wrongful confinement, of wrongful restraint, and offences for which the Police might not arrest without warrant, were almost all of a light description; there might be one or two exceptions, but in adopting the distinction of offences for which the Police might or might not arrest without warrant, the Committee had exercised the best discrimination they could. With regard to the exemptions under this head, they were, as the Bill stood before, "petitions or applications made or laid before an officer of Police;" but it was found that there were heads of villages in Madras and village Police officers in Bombay, who had magisterial powers, and they exercised those powers in a patriarchal way, and their proceedings were exempted from the provisions of the Code of Criminal Procedure. It was therefore thought advisable to exempt complaints made before those officers.

In Article 11 there was a provision which stood as follows:—

"In suits for possession instituted under Section 15, Act XIV of 1859, and applications for immediate possession under Section 1, Clause 2 of Act XVI of 1838, and Act V of 1864 passed by the Governor of Bombay in Council.	A stamp of one-fourth the value prescribed in the foregoing scale."

It would be observed that the first words of this provision referred to suits for possession under the Limitation Law, Act XIV of 1859. A person was ousted from property to which he thought he had a claim; if he brought his complaint within six months, then, whether his claim was good or not, he might be replaced in possession, and the other party might have recourse to a suit in the Civil Court to set aside this summary decision. Such suits were liable to a stamp-duty of one-fourth the value prescribed for ordinary suits, and the Hon'ble Mr. Shaw Stewart had told the Committee that there were suits of a similar nature under Act V of 1864 of the Bombay Code, and it had therefore been thought fair to bring those suits under the same provision as suits under Section 15 of the Limitation Law.

The next amendment was contained under the "special rules for the Bombay Presidency," under one of the provisions of which, in suits for revenue-paying or non-revenue-paying land, there were rules laid down for calculating the market-value of such land. Originally there were certain provisions for Bengal which were held to apply also to Madras and Bombay, but the Hon'ble Mr. Shaw Stewart had asked the Select Committee to introduce

special rules for the Bombay Presidency, and those rules seemed to place Bombay on exactly the same footing as Madras and Bengal, but the mode of calculation was made special. The Hon'ble member would no doubt explain the objects and reasons of those provisions.

The next provision was near the top of page 7, under Note 3. It referred to the mode by which, in cases of dispute, the Courts should ascertain whether the assumed value of land paying or not paying revenue was correct. Under the proviso in the original Bill, it was necessary that the person who contested that value should make an application; but under the amended rules, the Court might now, either of its own motion or on the application of the parties, make enquiries, and if the valuation were found too high, a refund would be made, or if too low, the difference would be charged, the object being to prevent persons from continually raising these questions as to the assumed value of suits, and harrassing the Courts to the great detriment of justice.

Section 7 had been remodelled on the same principle as the provision regarding stamps on criminal complaints had been amended; and Section 9 had been altered so as to save certain provisions of existing laws; those laws had not been amended, but a special proviso had been inserted with reference to them. Such were the principal amendments which the Select Committee had made.

The Hon'ble MR. BRANDRETH said that, from the Report of the Select Committee, it would be seen that there were two points on which he differed from the conclusions of the Committee. He therefore wished briefly to state the grounds on which he entertained that difference of opinion. The points on which he differed were the graduation of the scale under Article 11, and the question of a refund of stamp-duty paid on plaints, if it appeared, on the case being called up for trial, that there was no dispute between the parties. As regarded the first point, that was, the scale of stamp-duty on plaints, he thought that the rate ought not to be a uniform one up to 1,000 rupees. The Hon'ble Mr. Hobhouse, in his Statement of Objects and Reasons, observed that Article 11 imposed a comparatively high rate of duty on the poorer classes of suitors, and a comparatively low rate on the richer classes; but it must be remembered that small suits often took up the same time in hearing as large ones, and if small suits were to contribute in any appreciable degree towards the expense of the Courts, they must be taxed at a higher rate than suits of a greater value.

The other point to which he (MR. BRANDRETH) referred was the question of refund of stamp-duty on confessions of judgment. As far as his experience

went, most of the suits that were brought into the Courts were owing to the intention of the parties to defraud each other: such suits were no doubt most appropriate subjects of taxation, especially when they were contested, and when, as was usually the case, much false evidence was adduced on both sides. But he thought most people would admit that it was very desirable to prevent such contests as far as possible, and to induce the parties to come to terms with each other; and when the intention to defraud was not very deliberate, and the anger of the parties had had time to evaporate, and the course of resorting to the Court and the influence of friends had prevailed, and the parties had come to a settlement, when it was found that there was no dispute, and the Court gave judgment without much trouble, he thought that such suits were hardly fit subjects for consideration. He would not wish to exempt these suits altogether, but did not think that the increased stamp-duty should be taken, and would recommend that the refund of a fair proportion of such stamp should be given in such suits.

In all other respects he entirely concurred in the Bill as amended by the Select Committee, and did not bring forward the points on which he differed as affording any sufficient reason for objecting to the passing of the Bill.

The Hon'ble MR. HOBHOUSE said that, with reference to the latter portion of the Hon'ble Mr. Brandreth's remarks, he could not concur at all in the policy of refunds on what were called confessions of judgment. According to Mr. Brandreth's own statement, persons came into Court deliberately more or less with intention to defraud. There was no dispute between the parties, but they only required to use the pressure of the Court. In cases of that sort, where persons who might come to an agreement would not do so until the pressure of the stamp-law was put on them, he (MR. HOBHOUSE) should have a strong objection to make any refund at all. He believed that that was the only point on which he need make any remark, as the Hon'ble Member did not propose any substantive amendment in the scale of stamp-duty on plaints.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART moved the following amendments:—

That the following words be omitted from Article 10 of the Schedule contained in Section 6:—

	Rupees.	Annas.
"When presented to any Criminal Court, when the petition or application contains a complaint of the offence of wrongful confinement or wrongful restraint, or of any offence other than an offence for which Police officers may arrest without warrant, as specified in column 3 of the Schedule annexed to the Code of Criminal Procedure"	1	0

Also that the following words be omitted from the Exemptions to the said Article, *viz.* :—

"Petition, application, charge or information respecting any offence, when presented, made or laid before an officer of Police or before the heads of villages in the Presidency of Fort St. George or before village Police officers in the Presidency of Bombay.

"Any such petition, application, charge or information presented, made or laid before a Criminal Court, when such Court shall think that it ought to be exempted from stamp-duty."

And that the following words be substituted in lieu thereof as an Exemption :—

"Any petition, application, charge or information presented, made or laid to or before any public servant in reference to any offence or to any trial or enquiry relating to an offence."

Also that Section 7 be omitted.

He said that he felt that he was at a great disadvantage, because of the Members of this Council whom he had consulted, none had shared his opinion. Still he was encouraged to press his amendment because he found that its principle had been affirmed by the Legislative Council of 1860.

It appeared, that in the Presidency of Bengal, *i. e.*, in the districts under the Lieutenant-Governors of Bengal, the North-Western Provinces and the Panjáb, the custom had existed for long, in Bengal it may be said from time immemorial, of requiring all complaints of any criminal offences to be written on stamped paper of the value of eight annas, and that, in addition, complainants were required to pay for taking out and serving summonses, and for diet-money and subsistence to witnesses. In the Presidencies of Madras and Bombay, on the other hand, no fees or costs whatever were ever levied, and criminal proceedings were absolutely free as far as complaints were concerned. The institution-fee of eight annas was stopped when the general Stamp Act of 1860 was passed. He found that the paragraphs continuing this impost in Bengal, and exempting Madras and Bombay, were discussed on the 14th April 1860, when Sir Barnes Peacock, Sir James Outram, Sir Bartle Frere, Mr. Wilson, Mr. LeGeyt, Mr. Harington, Mr. Forbes, Sir Charles Jackson and Mr. Sconce were present. On this occasion, when the exemption of Bombay and Madras came under consideration, the Chief Justice, who was in the chair, remarked as follows :—

"He was of opinion that criminal proceedings ought to be exempt from stamp-duty everywhere, but if it was considered necessary that Bengal should be liable, he saw no sufficient reason for exempting Madras and Bombay."

and a discussion took place in which Sir Charles Jackson, Mr. Wilson and Sir Bartle Frere took part, the latter gentleman remarking as follows:—

"He agreed with the Hon'ble and learned Chairman that it was monstrous to demand a stamp tax from a man who wanted to complain of a criminal offence having been committed, and he would therefore willingly exempt such petitions in Bengal, as they were at present exempted in Madras and Bombay."

The result was that the principle of taxing complainants in criminal cases was unanimously rejected, and criminal complaints were declared free throughout India.

He (MR. SHAW STEWART) was unable to discover by what law or why the practice of making the complainant pay for summonses and other costs was discontinued in Bengal, but he found it stated that it was discontinued, and that since 1860, neither institution-fee nor costs had been levied in Bengal. After the experience of seven years, it was now sought to revert to the old practice, and this Bill required the institution-fee and costs to be lumped in one sum, and levied as an institution-fee of one rupee on all complaints throughout India.

There were four reasons given for this proposal which he desired to examine in their order. These were—

1. The unanimity of all officers in the Presidency of Bengal.
2. That this measure would suppress petty and vexatious complaints.
3. That it was right that the people who used the Magistrates' Courts should pay their fair share of the cost of those Courts.
4. That this provision was surrounded by such safeguards as to prevent any chance of its pressing hardly on any one.

Now the unanimity of the officers in Bengal who had been consulted was remarkable, but at the best it amounted to this, that petty and vexatious complaints had greatly increased within a certain period. And what was this period? it commenced in 1860, at the time when the two great Criminal Codes became law—laws whose effect, in changing the character of a people and the nature of their relations with the Magistrates, could not be over-estimated. He could see no good cause shown for attributing the increase of complaints, as most of the officers in Bengal did, to the suppression of the institution-fee, rather than to the action of those laws, and in the absence of any proof to the contrary, he could not but adopt the more rational conclusion that the increase had been caused by the Codes, rather than by the Stamp Act. But however this

might be, there was a most remarkable instance of a difference of opinion in the midst of all this unanimity. He found that, of eight Commissioners who were asked by the Government of Bengal to suggest remedies for the state of things existing, four only urged a reversion to the imposition of an institution-fee, while four did not. Of these four, he would especially signal one, Mr. Dampier, the Commissioner of Nuddea, whose opinion was, he thought, remarkably sound. He would refer to this hereafter, but he might state now, that Mr. Dampier suggested the adoption of the English system, by which the Magistrates' Courts were open to all comers, rich or poor, without fee, and those complainants who wished to take out process paid for the cost of summons and other expenses.

The second reason was that an institution-fee would prevent petty complaints. The only complaints which, in his opinion, would be prevented by it, were those of poor weak-spirited persons, who might be prevented coming to the Magistrates' Courts by this tax. Such a person might have been willing to undertake the journey of thirty or forty miles (no uncommon distance, he was informed, in Bengal), but if the thought of the rupee was too much for him, he staid at home to brood over his injuries, real or fancied, and to devise other means of redress or vengeance. To the rich, over-bearing man the proposed tax would be no impediment; he would gladly pay his rupee, thinking that he thereby purchased the right of hearing. He (MR. SHAW STEWART) did not think that this measure would effect any sensible diminution in the number of that class of complaints which alone were objectionable and injurious.

As to the third reason, he (MR. SHAW STEWART) would admit that it was fair to make those who benefited by the Courts pay for them ; but who really benefited ? It was not those who used them, who were compelled to seek redress for some criminal wrong in our Courts. It was the others who could stay at home, enjoying the happy results of good laws and good Courts, these were the persons who benefited and who ought to pay, and for this reason he thought that the cost of our Magistrates' Courts ought to be defrayed from the general revenues, and not in any special degree from those that had to use them.

The safeguards that surrounded this provision were two in number, both unsatisfactory. The first was, that if the accused person was convicted and fined, and the fine paid, the Magistrate might repay the complainant his rupee out of the fine, but the best case might break down. The accused might get off, or, if he was convicted and fined, the fine might not be recovered, and the chance of recouping the complainant depended on all this. The other safeguard that gave to the Magistrates a discretional power of remitting the fee was still more unsatisfactory and unbusiness-like. There was no principle

whatever for the Magistrate's guidance, when he was to remit and when to levy. One Magistrate might think this institution-fee a mistake, and likely to be injurious, and might remit it in all cases; another might approve of the principle and levy it in all cases. We could hardly call this a safeguard.

Having thus examined the reasons on which the Bill was based, he would state to the Council the very grave objections which he had to it. The first was that, if this fee prevented any one from bringing a complaint before a Magistrate, we ran a great risk of forcing him to seek redress in some other way less satisfactory. Take the case of a person who had a quarrel with his neighbour, and wished to bring a complaint, true or false, petty or the reverse, before a Magistrate; he found that he could not, or he would not, pay one rupee, and he was not unlikely then to take his complaint to the Police, changing it, if need were, to one that the Police could take cognizance of without warrant, or he might resort to means of revenge still more objectionable. Now, he did not think we could consider the Police of India to be in such a perfect state that it was desirable that common people should resort to them rather than to the Magistrate.

The next objection was that the Code of Criminal Procedure provided ample remedies which ought to be tried before they were said to fail. Mr. Shaw Stewart gathered that the Local Governments of the Presidency of Bengal had for long been urging their Magistrates to use these remedies, and that the Magistrates had, for some reason or other, declined doing so. These remedies were found enough in other parts of India, in proof of which he would read the following extract from a letter from the present Commissioner of Sind. Mr. Mansfield said—

"I cannot concur with the views of the Lieutenant-Governor of Bengal that it would be advisable to impose a stamp of eight annas on petitions to Magistrates. The reason urged for such a course is that petty criminal litigation has been increased by the exemption of these petitions from stamp-duty. The law, however, amply provides for all cases in which false charges have been brought, or in which the complaints shall be declared to be frivolous and vexatious. In the first case, the complainants have made themselves liable to a criminal prosecution. In the second case, where the offences charged are of a trivial nature, they render themselves liable to fine, the amount of which may be awarded to the accused person. The Penal Code, moreover, provides that an act is not an offence which causes such slight harm that no person of ordinary sense and temper would complain. If these provisions of the law be strictly carried out, they would form a greater check on the needless institution of criminal charges than any stamp law could effect. The principle of not imposing any stamp-duty on any criminal complaint is one which, in my opinion, cannot be too strongly advocated."

Besides this he would remark that these remedies must be had recourse to sooner or later, for unless the one rupee institution-fee stopped vexatious com-

plaints, which he was sure it would not, whatever effect it might have on petty ones, the evil would increase unless the reluctance of the Magistrates in Bengal to adopt the remedies provided in the Code were overcome. In the next place he thought the measure was essentially un-English, and opposed to the custom of all civilized countries. In England, Magistrates' Courts were open to all, and every one, however poor or however petty his grievance, might come and complain free of charge. If process was taken out on the complaint, summons had to be paid for and costs incurred, but the right of petition or application was free. He thought it was a thing to be proud of that the Code of Criminal Procedure had established this principle in Bengal and confirmed it in Madras and Bombay, and it was certainly backward legislation that would bar our Magisterial Courts to all but those who paid a rupee. A few words from the Magistrate did good. He did not know whether, on this side of India, Magistrates allowed themselves to give utterance to extra-judicial advice or directions, but in other parts a great proportion of the unnecessary and petty complaints were stopped by a few words of advice or rebuke, and the complainant went off satisfied with having stated his grievance and got a "*hukm.*" But if he had to pay a rupee, he would not be satisfied with this; he would expect more for his money than a few words from the Magistrate, and would go away dissatisfied. The fourth objection that he had to urge was that this tax would be unpopular and unproductive. The Government of Bombay said regarding it, that it would be "very unproductive and most justly unpopular" in that Presidency, and he believed the unpopularity would extend to the whole of India. The Stamp Committee had estimated the out-turn for Bombay at a lakh of rupees a year, but he should be surprised if it yielded more than half that sum. He should rather be inclined to estimate the result at rupees 30,000 or 40,000 for the whole Presidency.

In the next place, he thought the manner in which the offences had been classified was most unsatisfactory. He found that the Advocate General, who applied for a warrant to arrest on a charge of high treason; the policeman who made a similar application regarding an affray; the sufferers in grievous cases of extortion or wrongful confinement; all persons who complained of bribery, perjury or forgery, and the ryot whose cattle were mischievously injured, must all bring their complaints on stamped paper. While, on the other hand, complaints, however petty, of theft or hurt by a dangerous weapon, of defiling public reservoirs or injuring water-courses, might be preferred without any fee. The inconsistency of this was obvious. Lastly, he would urge that this measure was directly opposed to the dicta of our greatest jurists and philosophers. He should never forget the clear and convincing arguments by which

the Hon'ble Mr. Maine had shewn that Bentham's objections to judicial taxes did not apply to the civil procedure of India as long as the complex laws of the different sects were preserved; but these very arguments showed that Bentham's objections would apply with increased force to the measure now proposed, as no one could deny that our Criminal Codes were the simplest and best in the world.

He had thus attempted to show that the reasons assigned for this measure were insufficient, and that there were most serious objections to it. He did not know if his remarks had had any effect in convincing the Council, but he was satisfied in his own mind that the principle was bad. He would mention shortly what he thought ought to be done. He would leave it to the local legislatures to adopt, if they considered any change to be necessary, the English system, which was nearly identical with that proposed by Mr. Dampier, and while leaving free the right of petition or application, let the complainant pay for the cost of taking out and serving summons and the other preliminary expenses, to be recovered along with, or in addition to, any fine that might be imposed. He thought that some measure of this kind might without objection be adopted by the local legislatures in some parts of India.

But he most earnestly deprecated this Council attempting to legislate on a matter of such importance, the proper handling of which must depend on local circumstances, regarding which it could have, as in this case, no knowledge or experience.

He would not style this measure by the epithet with which the idea it contained was unanimously rejected by the Council of 1860, but he would express his firm opinion that it was a measure which could not be defended on the grounds of principle or expediency.

The Hon'ble MR. HOBHOUSE was strongly opposed to the amendment, and he would go as briefly as he could through the several objections of the Hon'ble Mr. Shaw Stewart. In the first instance, he said that the Council of 1860 had strongly condemned this measure: that he (MR. HOBHOUSE) denied, not because the word "monstrous" was not used by one of the Members, but because on looking over those debates there seemed to him to have been no discussion at all. Mr. Harington had simply put the usual clause, *viz.*, a stamp of eight annas on the institution of criminal complaints; then Sir Barnes Peacock objected, not that the tax was immoral, but simply that Bengal should not be taxed because Bombay and Madras were not, and then certain Members agreed to that without any debate at all. He had looked very carefully through the debates, and found that only a very short discussion took place, and that it was apparently

decided that because Bombay and Madras did not pay, Bengal should not. That seemed to him rather an impotent conclusion. He did not think that, until the present time, the question had ever been properly and fairly laid before the public or this Council. Then the Hon'ble Mr. Shaw Stewart took exceptions to the opinions expressed by different authorities in Bengal. He said that all the officers in Bengal wanted the imposition of such a stamp-duty, and then immediately afterwards he said that he did not think they wanted it, but he (MR. HOBHOUSE) would shew that all the authorities on this side of India were in favour of such a measure. The Lieutenant-Governor of the North-Western Provinces had strongly advised the imposition of an eight-anna stamp-duty; the members of the Board of Revenue and of the Sadr Court of those provinces said the same. The Chief Commissioner and every officer of experience in Oudh said the same. The Lieutenant-Governor, the Financial Commissioner, and the Judicial Commissioner of the Panjáb said the same. The Lieutenant-Governor of Bengal said the same; and so on through the different Commissioners and Magistrates in Lower Bengal. The Hon'ble Mr. Shaw Stewart had stated that, of the Commissioners in Bengal who were consulted on the subject, some said they wanted the imposition of the stamp-duty, but others said nothing about it, but he (MR. HOBHOUSE) did not think that that was the way in which the matter should have been stated to the Council. It was found by the Lieutenant-Governor of Bengal that a certain number of false and frivolous complaints for offences of a minor character were being instituted before the Magistrates' Courts; he had pointed this out year after year, and told the Magistrates that they had a remedy for the prevention of frivolous and vexatious complaints in the Code of Criminal Procedure, and asked the Magistrates why they did not adopt the remedy; and in reply the Magistrates said that they had applied the provisions of the Code of Criminal Procedure, but found that they did not answer the purpose. The Lieutenant-Governor had then asked the Commissioners and other officers how they would propose to remedy the evil, and, though he had not suggested this remedy of the imposition of a stamp-duty, yet, out of eight Commissioners, four volunteered their opinion that the imposition of a stamp on the institution of such complaints was necessary, and the Commissioner of Nuddea alone thought that the imposition of a stamp would not effect the object desired: that, however, was contrary to the opinion of the judicial officers in the Nuddea Division. He said that he would put nothing between a complainant and the Magistrate to whom he came for redress, and that was a fair argument enough, but he went on to say that the moment a man had made out his complaint, he would make him pay the summons fee. But that was the very thing which he (MR. HOBHOUSE) would not do. When a man had made out his case *primâ facie*, he would let

him go on without payment; but to say that you ought not to step between a man and the Courts before the complaint had been made, but that you might do so after a case had been made out, was, in his opinion, the very reverse of what ought to be done. The Hon'ble Mr. Shaw Stewart said he did not think that the proposed stamp would check petty complaints, but in saying so he was opposed to every authority on the subject; for it was certain that the moment the institution-stamp and payment for summonses were abolished, immediately up sprung an enormous number of petty complaints, and something like seventy-five per cent. of those complaints were never called up for trial at all, or were dismissed. The Hon'ble Mr. Shaw Stewart would not have such complainants pay for the expense of the Courts whose time they so largely occupied. He (MR. HOBHOUSE) so far agreed that access to the Criminal Courts should be as free as possible; all that he wanted was that complainants should pay something. Formerly, there was not only the institution-stamp of eight annas, but the subsistence allowance of witnesses, which was calculated at least at one anna a day, and it might be three annas, for thirty days; besides *talabáná* for peons at the fate of two annas per day; so that, formerly, a complainant never had to pay less than three rupees, and in some cases the expense might amount to six or seven rupees, before he could be heard in the Criminal Courts. In lieu of all those expenses, it was now proposed to impose the very low stamp of one rupee; eight annas to represent the institution-stamp, and the rest the summons, *talabáná*, &c. He thought that the safeguards that had been provided would prevent any injustice being done. The Hon'ble Mr. Shaw Stewart did not understand how a Magistrate was to exercise the discretion vested in him; but he (MR. HOBHOUSE) thought that, ordinarily speaking, on the average it would be found that officers did exercise their discretion very well, and why the Magistrates should not exercise their discretion judiciously in this instance he could not understand. If a man came with what was vulgarly called a black eye, and said A B struck him, the Magistrate would no doubt, in the exercise of his discretion, permit such a person to make his complaint without payment of stamp-duty. Again, if in any case the complainant made out his statement, he could be reimbursed by putting on a fine for the purpose of recouping the complainant; and as it was found that, in the majority of cases, fines were usually recovered, therefore the complainant would in most cases be recouped his original expenses. Then, it should also be remembered that, under the provisions of Act XVIII of 1865, which were saved by this Bill, the Governor General in Council could exempt any particular province or place from the operation of any one or more parts of the stamp law; and therefore there was

not only the discretion of the judicial officer, and the probability of repayment of a complainant's expenses to act as safeguards, but there was also the power of exemption given to the Governor General in Council.

MR. HOBHOUSE would now say something on the general principle that complainants should, in each particular instance, be called on to pay something towards the expenses of the Courts. Officers of great experience said that the present law, by opening the way too readily to complaints of a trivial and false character, prevented all compromise out of the Courts. If, formerly, a man got a box in the ear, he would consider whether he should go into Court, because he would have to pay for complaining; but now he would say—"It will cost me nothing at all; I shall make out a plausible story; my enemy will come up to the Court and bring his witnesses, and then I am not to the fore; I do not appear again; my enemy is called up; his witnesses (innocent persons) are brought up"—and thus a feud was got up in the village. But if such a man had to pay a stamp of one rupee, he would never have brought the complaint, and no feud would have arisen. He (MR. HOBHOUSE) therefore thought the imposition of an institution-fee of one rupee would tend to keep from the Courts petty matters which ought not to be brought into Court at all. The Hon'ble Mr. Shaw Stewart had also said that if you imposed a stamp-duty only on the more trifling offences, it would have the effect of inducing a person who wanted to bring a false or vexatious complaint to select a heinous offence in order to avoid the stamp-duty, but he (MR. HOBHOUSE) thought that the experience in Bengal was different; that, for the purposes of a false complaint, people selected a trivial offence in preference to one of a more heinous nature. Again, it was said that the tax would be unpopular and unproductive. He doubted that, because it was not so unproductive before; in Bengal it actually produced about a lákh and a half of rupees, in addition to the *talabáná* and other fees; so that, in reality, the proposed institution-stamp should bring in at least as much, as the fee before was much less. He believed that he had now answered, to the best of his ability, the various objections raised by the Hon'ble Member, and he trusted that the Council would consider the answers satisfactory.

The Hon'ble MR. SHAW STEWART had a few words to say in rejoinder. He thought the Hon'ble gentleman could not have examined the proceedings of 1860, when he said there was no discussion, because he found that the Chairman, Sir Barnes Peacock, Sir C. Jackson, Mr. Harington, Mr. LeGeyt, Sir B. Frere and Mr. Wilson, all spoke in condemnation of the proposal to tax criminal complaints. In fact there was no one in the Council who attempted

to defend it. The Hon'ble Mr. Hobhouse considered that the divergence of opinion among the Bengal Commissioners was of no weight, but he would remind his Hon'ble friend that the Government of Bengal had specially asked the Commissioners to state what remedies they would propose, and though the remedy of an institution-fee was not expressly suggested to them, yet, there was no doubt, they would have proposed it if they had thought it necessary or likely to succeed. He could not too often draw the Council's attention to the difference between an institution-fee on the first complaint or application, and the levy of the costs after that complaint had been entertained, and it was this practice, so well known in England, that Mr. Dampier had suggested for Bengal. As for the chance of village feuds arising from complaints being freely taken up by Magistrates, he was of opinion that they were much more likely to be caused, and compromises prevented, by a measure which would limit in any degree the right of petition, and the power of the Magistrates to interfere with sound and reasonable advice.

The Hon'ble MR. HOBHOUSE said, he believed he had omitted to answer the observations of the Hon'ble Mr. Shaw Stewart as to the distinction of offences adopted by the Select Committee. He (MR HOBHOUSE) had said before that it was extremely difficult to frame the distinction; no doubt there were one or two offences of a somewhat heinous nature for which complainants would have to pay a stamp-duty; but as it was found extremely difficult to draw the line, that list was taken which seemed on the whole to meet the case the best. He did not say that the line that had been drawn between offences for which complainants should pay, and offences complaints regarding which might be made without payment of stamp-duty, was perfect, but it was as perfect as the law would admit of its being made.

The Motions were severally put and negatived.

The Hon'ble MR. SHAW STEWART would ask the Hon'ble Mover of this Bill one question. Whether, being aware that the Bombay Government, having been telegraphed to, had replied that it was averse to the measure as regarded an institution-fee on criminal complaints, and that it had had no opportunity of expressing at length its opinion, he proposed to introduce any provision by which Bombay would be exempted temporarily or otherwise from the operation of the portion of the Bill referred to.

The Hon'ble MR. HOBHOUSE said, it seemed to him better to lay down a principle which would apply to all the provinces of India. There was an Act by which the Governor General in Council could exempt any province from the

operation of this particular schedule. It seemed better to pass the Bill as it stood, so as to leave the Governor General in Council to exempt any place he thought necessary.

The Hon'ble MR. SHAW STEWART desired to move an amendment with the object of suspending a portion of the Bill in the Presidency of Bombay, and asked His Excellency the President whether he might introduce it now, or move the adjournment of the debate.

His Excellency THE PRESIDENT expressed a desire that the debate should proceed.

The Hon'ble MR. SHAW STEWART then moved as an amendment:—

That the following section be added to the Bill:—

"So much of this Act as requires any petition or application regarding a criminal offence, or the first examination of a complainant, to be written on stamp paper of the value of one rupee, shall not take effect in the Presidency of Bombay for the period of one year from the date of passing of this Act, unless the Governor in Council of Bombay shall by order in the Government *Gazette* direct it to take effect at any earlier date."

He said he hoped this amendment would be approved. The Government of Bombay had never had an opportunity of giving an opinion on the matured measure. In November last he was asked by the Stamp Commissioners to obtain the opinion of the Government of Bombay on this among other points, and he wrote to the Chief Secretary, forwarding copy of a memorandum prepared by Mr. Hobhouse. The Bombay Government probably deferred answering this letter till they had the report of the Stamp Committee, which they evidently expected would be sent them. At length, and apparently after learning from a telegram from the Assistant Secretary that their opinion was expected, they forwarded a reply to his letter of November, of which he would read the following:—

"In reply, I am directed to observe that it would not seem necessary to enter at any length into the first question, because it appears from paragraph 18 of Mr. Hobhouse's memorandum that the tax in question is admitted to be 'evidently not needed,' while paragraph 51 of the some memorandum shows that its imposition is now contemplated only in the Bengal Presidency. As, however, the Committee appointed to consider the subject of judicial stamps has asked for an expression of the opinion of this Government, I am directed to state that His Excellency in Council fully concurs with yourself and your predecessors in objecting to the tax; that he is strongly opposed to its imposition in this Presidency, where, he believes, it would be very unproductive and most justly unpopular, and that, if there be any serious desire to extend such a tax to this Presidency, he trusts that this Government will be allowed full time to obtain information and opinions from the local officers, and to submit their views in a matured shape to the Government of India."

In addition to this, he found from a summary that had been prepared in the Bombay Secretariat that two officers (a Revenue Commissioner and a Judge) were in favour of a tax on criminal complaints, while "the great majority of officers deprecated any alteration in this respect." MR. SHAW STEWART had already read to the Council the opinion of one of the ablest members of the Bombay Civil Service, and he thought that this Council could not force the measure on Bombay in spite of the facts that no fee or costs had ever been levied there, that the Government had never been properly consulted on the measure, that it was averse to it, and that nearly all the public officers in the Presidency objected to it. His amendment would give the Government of Bombay a year's time to state their objections, and would not cause a loss of more than thirty or forty thousand rupees of revenue.

The Hon'ble MR. HOBHOUSE said he was in the hands of the Council in this matter. He would briefly explain how it was that the matter had been submitted to the Bombay Government without the expression of his opinion as to the advisability of imposing this criminal stamp in the Bombay Presidency. The truth was that he had not formed any opinion when he first drew up certain rough notes for the consideration of the Stamp Committee. Those notes were put into the hands of the Hon'ble Mr. Shaw Stewart, and he (MR. HOBHOUSE) had not been aware that they had been sent to Bombay. So far as the sending of the Stamp Commission's Report to Bombay was concerned, he was not aware how it had happened that it had not been forwarded to that Presidency. He preferred that the Bill should be passed as it was, and that the Governor General in Council should exempt that Presidency if he thought proper. But if the Council thought otherwise, he would not object.

The Hon'ble MR. TAYLOR said, he thought there was a strong objection to making any exemption in favour of Bombay. He could not conceive any such objection that did not equally apply to Madras, and the opinions received from the Madras Government were entirely in favour of the Bill.

His Excellency THE PRESIDENT said that no doubt it was to be regretted that the draft of the Bill was not sent to Bombay with the view of eliciting the opinion of the Bombay Government on it; but the fact was that the details of the Bill had been before that Government, and that they had given an opinion on the subject under discussion. The Council had heard the letter of that Government read, and also an abstract of the opinions of the different local judicial officers. It seemed, therefore, that all the information likely to come from Bombay was before the Council. At any rate, if the Government of Bombay should think proper again to make a representation on the subject, he was confident that it would have that consideration that was due to it. But

it seemed to HIS EXCELLENCY inexpedient to accept the amendment before the Council. As remarked by the Hon'ble Mr. Taylor, if the Council exempted Bombay, they were bound also to exempt Madras. HIS EXCELLENCY even went further: he thought that if they delayed to extend the law to Bombay and Madras, they were bound to give the Bengal Presidency the same advantage. He was in favour of the Bill being passed as it was, leaving it to the Bombay Government to come up and show any reason for exempting that Presidency from the operation of the clause imposing an institution-fee on certain criminal complaints. The Hon'ble Mr. Shaw Stewart had spoken very effectively in favour of the views he had urged; but HIS EXCELLENCY must say, as an old Magistrate and Commissioner, that he did not admit the force of his arguments. From his own experience he could say that without preventing people coming up, a small stamp-duty would have the effect of diminishing the number of petty and vexatious complaints which were continually brought up in every part of India where he had been. While now and then a man might be desirous of presenting to a Magistrate a petition that should be exempted from the payment of stamp-duty, nevertheless the great majority of complaints were really fit subjects of taxation, as they were of the nature of petty misdemeanours. Cases of that sort should not be exempted, and he thought the levy of a stamp-duty in such cases would discourage people from quarrelling with their neighbours, and make them endeavour, so far as was practicable, to adjust their disputes amongst themselves. If people chose to complain about petty matters, they should pay some small penalty for the luxury of coming into Court.

The Motion was put and negatived.

The Hon'ble MR. HOBHOUSE moved that the Bill as amended by the Select Committee be passed.

The Hon'ble SIR HENRY DURAND wished to say a few words in connection with the Bill before intimating his agreement to it. He made these remarks in consequence of observations from various quarters to the effect that, for the successful working of a Bill of this kind in the hands both of the public and of the judicial officers, it was a great matter that it should be in a simple compact form. He knew very well that the revision of Schedule A had yet to take place, and that the Right Hon'ble Mr. Massey was anxious that the passing of this Bill should not be delayed; he (SIR H. DURAND) had not, therefore, thought it necessary, in the previous stages of this Bill, to say anything with reference to this subject, because he had

no doubt that the Hon'ble Mr. Hobhouse would have the time and the leisure, during the next Session of the Council, to put the Bill into a complete form, repealing Act X of 1862 and the amending Acts which had followed, including the present Bill, and consolidating the whole into one complete Act, throwing out all that he wished to omit in the former Acts, but keeping all that he wished to retain; and putting the whole before the public in the form which was most convenient, with the addition of a good index.

The Right Hon'ble MR. MASSEY said that the whole subject of the stamp laws would come before the Council during their next Session, and then any errors which existed in this Bill might be corrected. He hoped that would satisfy not only the Hon'ble Sir Henry Durand, but also the Hon'ble Mr. Shaw Stewart who had been so discomfited to-day. If the Bombay Government should be of opinion, from the working of this Bill, that it should be modified or that the Bombay Presidency should be entirely excluded from the operation of the particular clause which had been so much discussed, those reasons would come with much greater weight when they were backed by the experience of a year.

The Hon'ble MR. SHAW STEWART said that it would have been better, in his opinion, to have made enquiries before legislating, than to pass a law to which all local officers objected, and to promise revision if after trial the law seemed undesirable.

The Right Hon'ble MR. MASSEY thought that the law was based on most ample and extensive enquiry.

The Motion was put and agreed to.

DISTRIBUTION OF BUSINESS PANJÁB COURTS' BILL.

The Hon'ble MR. BRANDRETH presented the Report of the Select Committee on the Bill to enable Deputy Commissioners in the Panjáb to distribute the business in subordinate Courts. He said that the amendments made by the Committee were merely that, in accordance with the wishes of the Lieutenant-Governor of the North-Western Provinces, and the Chief Commissioners of Oudh and the Central Provinces, the Bill had been extended to the Jhánsí Division, to Oudh and the Central Provinces. A section had also been added, to prevent misconception, that nothing in the Act should apply to Courts of Small Causes. As the amendments were of so simple and obviously indisputable a character, he would ask His Excellency to suspend the Rules for the Conduct of Business to enable him to pass the Bill at once through it subsequent stages.

The Hon'ble MR. BRANDRETH having applied to His Excellency the President to suspend the Rules for the Conduct of Business,—

The President declared the Rules suspended.

The Hon'ble MR. BRANDRETH then moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. BRANDRETH also moved that the Bill as amended be passed.

The Motion was put and agreed to.

PETTY SESSIONS (NORTH-WESTERN PROVINCES) BILL.

The Hon'ble MR. MAINE introduced the Bill to remove doubts as to the legality of certain sentences passed by tribunals, called Petty Sessions Courts, in the North-Western Provinces. He said that, on the last day of meeting, he had explained to the Council that the Bill was deemed necessary by the High Court of the North-Western Provinces; that, looking to the system of Indian criminal procedure, the legality of sentences passed by a Board of Honorary Magistrates sitting together was at least doubtful. A copy of the Bill had been forwarded to the learned Chief Justice of the High Court at Agra, and a letter had since been received from the Chief Justice, from which he (MR. MAINE) concluded that the Bill was approved. The Bill, which was very short, provided that—

"When two or more persons authorized to exercise all or any of the powers of a Magistrate sit together for the despatch of business in any place in the said provinces, any summons, warrant or process or other proceeding, and any order, judgment, finding or sentence, signed by any two or more of them, shall be as valid to all intents and purposes as if it were solely signed, when the powers of one or more of them are higher than the powers of the others or other of them, by such one of them as has, or by one of such of them as have, been invested under section 23 of the Code of Criminal Procedure with the highest of such powers, or, when their powers are equal, by any one of them;"

And that—

"All sentences heretofore passed by any Magistrates sitting together in any such place as aforesaid, shall be deemed to be as valid as if this Act had then been passed."

It was also provided that the High Court might frame rules for the conduct of business by Magistrates sitting together, and that any Local Government might extend the Act.

The Hon'ble MR. MAINE having applied to His Excellency the President to suspend the Rules for the Conduct of Business,—

The President declared the Rules suspended.

The Hon'ble MR. MAINE then moved that the Bill be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill be passed.

The Motion was put and agreed to.

His Excellency THE PRESIDENT said that his Hon'ble friend Mr. Cowie had sent in his resignation. They were all sensible of the value of the opinions which he had given them on commercial questions, and of the uniform courtesy of his demeanour. They deeply regretted the loss of his services after the unprecedented period of four years.

The Council then adjourned *sine die*.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (*Legislative*).

CALCUTTA,
The 22nd March, 1867.

Govt. of India, Central Printing Office.—No. 838 L. D.—6-5-82.—50.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 22nd May, 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble H. Sumner Maine.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble Sir George Yule, C. B., K. C. S. I.

MUNSIFS' JURISDICTION BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill to alter the jurisdiction of District Munsifs and for other purposes, said that the subject of this Bill was somewhat urgent, and that everybody who could speak with authority on it was in favour of the proposed measure. He held in his hand a letter from the High Court of the North-Western Provinces, which contained the following passage:—

"The jurisdiction of the Munsif (proper), which in Madras extends to Rupees 1,000, "and in Bombay to Rupees 5,000, is limited in Bengal and the North-Western Provinces to "Rupees 300. Since 1831 the Munsifs' jurisdiction has remained fixed at Rupees 300, "notwithstanding the recommendations made first in 1843 by the Indian Law Commission, "afterwards by Messrs. Harington and Mills in 1854, and lastly by the Law Commission in "1855. Messrs. Harington and Mills were of opinion that if adequate salaries were assigned "to them, the jurisdiction of the Munsifs might be fixed at Rupees 1,000. Whether this be "the limit which should be now fixed, or Rupees 2,500, as proposed in 1855, the Court desires "to express its opinion that the judicial ability possessed by the Munsifs of these Provinces is "fully adequate to a far more extended jurisdiction than that which they have by the Re-"gulation of 1831. In truth, a jurisdiction far exceeding, as regards the value of the property "in dispute, the largest of these sums is now exercised by the Munsifs in certain suits concern-"ing land, which, by the present rules for the valuation of suits, must be instituted in the "Munsifs' Courts."

The proposal to increase the jurisdiction of the District Munsifs arose out of the recent increase of the salaries of the Uncovenanted Service. An addi-

tion to the jurisdiction was, as the High Court of the North-Western Provinces had remarked, only the legitimate sequence of the sanctioned increase in the salary, position, prospects, and, Mr. Maine would add, of the increased judicial ability of the Munsifs. In the proposition of the Agra High Court, the Government of the North-Western Provinces concurred, and, in his letter, dated 1st March 1867, His Honour the Lieutenant-Governor recommended for the sanction of the Supreme Government that the jurisdiction of all the Munsifs be raised to Rupees 1,000, the Local Government being empowered to increase it further by notification in the official *Gazette* to Rupees 2,500. The papers on the subject were then sent by the Supreme Government to the High Court at Fort William, for an expression of their views on the question of the enlargement of the jurisdiction of the Munsifs in the Lower Provinces, and their reply, dated the 8th of April 1867, stated that the Court concurred in the proposal that such jurisdiction should be at once raised to Rupees 1,000. The Court reserved the question of its further extension for future consideration, but were of opinion that the power to extend it from time to time, as might seem expedient in particular cases, might unobjectionably be vested in the Local Government. He (Mr. Maine) might mention that the matter had not been sent to the Local Government of the Lower Provinces, as it was then in a state of transition, but there was appended to the papers a note by the Hon'ble Mr. Grey, dated the 9th of March last, in which he said that he was quite in favour of increasing the Munsifs' jurisdiction up to Rupees 1,000. There were, thus, both Lieutenant-Governors and both High Courts in favour of the proposed change, the urgency of which arose from the obvious desirability of making the increase in the Munsifs' jurisdiction coincide in point of time with their increase of pay and advance in position.

There were two other points on which he proposed that the Council should take this opportunity of legislating. The new Stamp Act had, as was well known, altered the mode of valuing revenue-paying lands for the purpose of estimating the stamp-duty on plaints in suits relating to such lands. The result would be that much of the appellate jurisdiction of the Civil Judges would be taken away. This was a serious change. A vastly increased number of regular appeals would go to the High Courts, and, though this in the opinion of one learned Chief Justice might at present be beneficial to the country at large, it would necessitate the maintenance of the High Court Judges at their present number, and this was opposed to the wishes of the Home Government. Mr. Maine would therefore propose to insert a clause in the Bill, raising the appellate jurisdiction of the Civil Judge to Rupees 50,000. The last point to which he would refer related to Principal Sadr Amíns. The Small Cause Court

Act gave power to invest the Small Cause Court Judges with the powers of Principal Sadr Amíns, but there was no provision for the investment of Principal Sadr Amíns with the jurisdiction of Small Cause Court Judges. He would, therefore, in accordance with the suggestion of the Government of the North-Western Provinces, which had been approved of by the present Lieutenant-Governor of Bengal, propose to empower the Local Government to appoint Principal Sadr Amíns to be Small Cause Court Judges within their respective jurisdictions.

The Motion was put and agreed to.

RAILWAY SERVANTS' BILL.

The Hon'ble MR. TAYLOR, in moving for leave to introduce a Bill to render penal certain offences committed by servants of Railway Companies, said that the object of this Bill was to put a stop to the bribing of Station-Masters and other Railway servants, a practice which must obviously be injurious to the mercantile community as well as to the Railway Companies. The practice, he regretted to say, prevailed to a serious extent, and was likely to increase unless means were taken to check it. The Bill, in order to effect its object, simply declared that persons in the employ of Railway Companies should be deemed to be "public servants" within the meaning of Sections 161 to 165 of the Indian Penal Code. This declaration formed a section of a Bill now before the Council for consolidating the Railway law of India, which had been submitted to the Boards of the various Companies, but which might have to stand over for some months. No objection had been taken to the clause in question; on the contrary, there was a general concurrence of opinion in its favour, and the local Railway agencies were particularly desirous that the clause should be enacted at the earliest possible date. The Bill extended to persons employed on all Railways and Tramways in British India, and also (as to British subjects) in the dominions of allied Princes and States, and as it was urgently needed, he trusted that it might become law with as little delay as the rules of the Council permitted.

The Motion was put and agreed to.

The Council adjourned till the 29th May 1867.

WHITLEY STOKES,

Asst. Secy. to the Govt. of India,
Home Dept. (Legislative.)

SIMLA,
The 22nd May 1867.

Government of India Central Printing Office.—No. 127 L. D.—14-7-82.—50.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 29th May, 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble H. Sumner Maine.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble Sir George Yule, C. B., K. C. S. I.

RAILWAY SERVANTS' BILL.

The Hon'ble MR. TAYLOR introduced the Bill to render penal certain offences committed by servants of Railway Companies, and moved that it be referred to a Select Committee, with instructions to report in a week. He said that he had little to add to the remarks which he had previously made as to the object of the Bill and the results of its becoming law. The Bill simply declared that persons in the employ of Railway Companies should be deemed to be public servants within the meaning of Sections 161 to 165 of the Indian Penal Code. This would render the taking of a bribe in respect of an official act by a Railway servant a penal offence punishable with imprisonment, with or without hard labour, for a term which might extend to three years, or with fine, or with both. At present, the only punishment to which such offenders were liable was dismissal; but it was obvious that when once a man was in possession of his ill-gotten gains, dismissal was practically no punishment at all. He held in his hand a letter from Mr. Stephenson, the member of the Board of Agency who specially supervised the traffic administration of the East Indian Railway, in which he said that he was absolutely helpless in the matter of bribery and corruption of Station-masters. "I can only dismiss a man," says Mr. Stephenson, "which he cares nothing about after he has made his money." And Mr. Stephenson pressed the enactment of Section 55 of the proposed Railway Act, which was embodied in the present Bill, "as the only means that would enable him to stop this bribery." Of course we could not hope to stop

the practice unless we could bring the law to bear on each of the two parties necessary to every case contemplated by the Bill—unless we punished the giver as well as the receiver. As his Right Hon'ble friend Mr. Massey had observed to him the other day, if there was no briber there could be no bribee; but legislation, in England at least, had hitherto failed to reach the former. Should the present Bill become law, however, the Indian Penal Code would effect this object. The bribery of a Railway servant would be an "offence" under the Penal Code, and whoever abetted any such offence would, under Section 109, be punishable with the punishment provided for the offence. Take for instance the first illustration to that Section: If A offers a bribe to B, a Railway servant, as a reward for showing A some favour—such as giving him an undue preference in the hiring of Railway waggons—and if B accepts the bribe, A has abetted the offence of bribery, and would be liable to the punishment before mentioned. Suppose, too, the bribe was not accepted, the would-be briber would still be punishable, under Section 119 of the Code, with imprisonment for a term which might extend to 18 months, or with fine, or with both. MR. TAYLOR concluded by hoping that, as soon as these provisions were generally known, an effectual check would be placed on the scandalous proceedings in the traffic department of our largest Railways, of which we had lately heard so much; and to which it was unnecessary to refer more particularly.

The Hon'ble MR. MAINE was anxious that the Bill should be referred to a Select Committee, in order that the Council might be sure that, if it became law, no more would be imposed on Railway servants than they might be reasonably expected to bear. He might mention that, when he was passing in 1865 through the Central Provinces, he had been told by Captain Sherard Osborne, one of the highest authorities on the subject, that it would be quite impossible to work the Indian Railway system without some such enactment as the present.

The Motion was put and agreed to.

CURRENCY ACT AMENDMENT BILL.

The Right Hon'ble MR. MASSEY, in moving for leave to introduce a Bill to amend Act No. XIX of 1861 (to provide for a Government Paper Currency), said that the Council were aware that, for the purposes of the Currency Act, India was divided into a number of circles of issue, and that Government promissory notes not issued in the presidency towns were payable only at the place where they were issued, and at the principal town of the presidency within which such place was situated. This arrangement was generally very suitable, but it was found to be inconvenient where the course of trade did not coincide with the

political divisions of the country, in reference to which the system of issue and payment was established. For example, the trade of the Central Provinces was now almost wholly with Bombay; with the rest of India their trade had diminished where it had not altogether disappeared. But notes issued at Nagpore were payable only there, and at Calcutta, the presidency town of the presidency within which Nagpore was situated. Much inconvenience was accordingly caused to the traders of the Central Provinces who desired to make use of currency notes in their transactions with Bombay. MR. MASSEY had communicated on the subject with the Chief Commissioner, who agreed that it was desirable to substitute Bombay for Calcutta as the capital of the political division in which, for the purposes of the Currency Act, Nagpore should be deemed to be situated. He (MR. MASSEY) had accordingly prepared a short Bill by which he proposed to empower the Governor General in Council to transfer, for the purposes of the Currency Act, any place of issue other than a presidency town from one presidency to another. The convenience of the enactment, so far as regarded the commercial relations between the Central Provinces and Bombay would be great; and Railway communication having been established, no difficulty would result to Government from a glut of currency notes at Bombay, for it would now be easy to convey thither from Nagpore the specie necessary to cash the notes. The proposed enactment was merely a matter which might have been settled by an executive order, but for the stringency with which Section 8 of the Currency Act had been framed.

The Motion was put and agreed to.

The following Select Committee was named—

On the Bill to render penal certain offences committed by servants of Railway Companies—The Hon'ble Mr. Maine and the Mover.

The Council adjourned till the 5th June 1867.

SIMLA,
The 29th May 1867.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

Government of India Central Printing Office —No. 839 L. D.—15-5-82—50.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 5th June 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble H. Sumner Maine.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Major-General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble Sir George Yule, C. B., K. C. S. I.
The Hon'ble John Strachey.

The Hon'ble MR. STRACHEY took the oath of allegiance, and the oath that he would faithfully discharge the duties of his office.

CURRENCY ACT AMENDMENT BILL.

The Right Hon'ble MR. MASSEY introduced the Bill to amend Act XIX of 1861 (to provide for a Government Paper Currency), and moved that it be referred to a Select Committee with instructions to report in a week. He said that he had already explained that, under the Currency Act, Government promissory notes not issued in the presidency towns were payable only at the place where they were issued, and at the chief town of the presidency within which such place was situated. The present Bill proposed to remove this restriction, which had proved inconvenient, and to accommodate the provisions of the law to the exigencies of trade and commerce. The Bill accordingly empowered the Governor General in Council to transfer, for the purposes of the encashment of notes, any place of issue from one presidency to another. He had explained that the Bill had been suggested by the case of Nagpore, the course of whose trade was now almost exclusively directed to Bombay. The Nagpore traders were desirous of availing themselves of the facilities afforded by Government notes, but were precluded from doing so by the circumstance that the notes obtainable at Nagpore could be cashed only there and at

Calcutta. Should the Bill become law, it would, in the first instance at all events, be brought into operation only so far as regarded Nagpore.

The Motion was put and agreed to.

The following Select Committee was named—

On the Bill to amend Act XIX of 1861 (to provide for a Government Paper Currency)—The Hon'ble Messrs. Maine and Strachey and the Mover.

The Council adjourned till the 12th June 1867.

WHITLEY STOKES,

SIMLA,
The 5th June 1867.

Asst. Secy. to the Govt. of India,
Home Department (Legislative).

C. I. C. P. O.—No. 44 L. D.—17-5-1906.—180.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 12th June 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble H. Sumner Maine.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble Sir George Yule, C. B., K. C. S. I.
The Hon'ble John Strachey.

CURRENCY ACT AMENDMENT BILL.

The Right Hon'ble MR. MASSEY presented the Report of the Select Committee on the Bill to amend Act XIX of 1861 (to provide for a Government Paper Currency).

LICENSE ACT AMENDMENT BILL.

The Right Hon'ble MR. MASSEY also moved for leave to introduce a Bill to explain and amend Act No. XXI of 1867 (for the Licensing of Professions and Trades). He said:—"The amendments refer chiefly to that part of the Act which regulates the procedure. By clauses 10 and 11, the Collector is to determine under which class every person liable to the tax is to be assessed, and to compile a register of the persons licensed, of their respective professions and trades, of the class under which each has been assessed, and of the amount paid. After the Collector has fixed the assessment under clause 10, it becomes the duty of the person assessed to take out his license accordingly, or to petition against the assessment; and failing to do either of these things, he is liable to the penalty prescribed by Section 15. Now this proceeding may be considered rather too abrupt. A professional gentleman or a trader may neglect to take out a license without any intention to dispute his assessment, or to

resist the law. It is not likely, indeed, that the Collector would in such a case resort to extreme measures, or that he would in any case seek to enforce the law in a vexatious or offensive manner. But the tax-payer has a right to expect that reasonable precautions will be taken against a possible abuse of the law.' I propose, therefore, to modify the 10th Section, so far as to provide that notice of his assessment shall be served on the person who has omitted to take out a license, seven days before proceedings are taken against him under the penal Section. Section 11 is re-cast to correspond with the amendments in Section 10. I now come to the penal Section itself, in which the more important amendment is made. The Section runs thus:—

'If after the said first day of May 1867, any person shall exercise his profession or trade without having taken out a license as required by this Act, he shall be liable, on conviction before a Magistrate, to a penalty not exceeding five times the amount which in the judgment of the Magistrate would have been payable by such person in respect of a license duly taken out as aforesaid.'

Now these words may be read in two different senses. The Magistrate may hold that, as the Act has provided machinery for rectifying any error in the original assessment, by petition to the Collector and ultimately by appeal to the Commissioner of Revenue, the penalty attaches if the defendant has neither paid nor appealed, and that the measure of the penalty is five times the amount of the original assessment. But the words are susceptible of a different construction; and the Magistrate may be of opinion that he is bound, or at least that it is open to him, to satisfy himself by an independent enquiry as to the class in which the defendant is liable to be assessed, before he determines the amount of the penalty. I will not pretend to give an opinion as to which interpretation of the Act is the correct one; but certainly it was not the intention of its framers, either, on the one hand, to subject the person exercising a profession or trade to the annoyance of an investigation of his profits in a Court of law; nor, on the other, to clog the collection of the tax with the difficulties and delays which such a process would entail. I propose, therefore, to leave out the words which may appear to confer this discretion, or to impose this obligation, on the Magistrate. Section 15, as amended, will therefore run thus—

'If the Collector shall have caused a notice to be served on any person stating the class under which he has been assessed, and requiring him within seven days from the date of the service to take out a license and to pay for the same the sum (mentioning it) payable therefor under the provisions of this Act, and if the person so served shall not, within the period specified in the said notice, have taken out a license and paid for the same as required by the said notice,

he shall, on conviction before a Magistrate, be subject to a penalty not exceeding rupees five hundred, and not less than the sum mentioned in such notice. Every such notice shall be deemed to be sufficiently served if left at the residence or usual place of business of the person to whom it is addressed.'

Thus the duty of the Magistrate will be clear and simple. If the defendant has neither taken out a license pursuant to notice, nor exercised his right of appeal, he will be subject to a penalty not exceeding the maximum duty leviable under the Act.

There is one other amendment of a different character which I also propose to make. By Schedule B of the Act, public Companies are assessed according to their paid-up capital or declared profits. But it has been represented to us that some of these Companies have only agencies in this country, and that their capital is an inaccurate criterion of their Indian profits. I have added a clause, therefore, providing that, if any such Company shall satisfy the Collector that it is assessed on a scale exceeding two per cent. on its profits in India, no more than two per cent. of such profits shall be required in payment of a license.

These are the only amendments which I propose; but there is one other point to which I should perhaps advert. It has been said that the 5th Section of the Act is not sufficiently explicit as to the mode by which the proper assessment of every person liable to the tax shall be arrived at. The words are 'every person,' &c., 'whose annual profits shall be Rupees 200 or upwards, shall take out a license;' and stress has been laid on the words 'shall be,' as if they imported something which could only be ascertained in the future. Now it would be a sufficient answer to this objection, that such a construction would be wholly inconsistent with a main provision of the Act, which requires any person exercising a trade or profession on the first day of May in the present year to take out a license, and subjects him to a penalty if he exercises his trade or profession after that day without taking out a license; and, therefore, according to the elementary rule which requires every doubtful expression to be construed so as to support and not to defeat the manifest intention of the legislature, the construction contended for must be at once rejected. But, in truth, there is no ambiguity in the clause. The words 'shall be' in Acts of Parliament are merely an expression of legislative will. They are employed indifferently to signify the future or the present tense, and are always governed by the context and the general scope of the Act. In the case of the License Act, on and after the first of May 1867, the words 'shall be' in Section 5 were

and are to be understood as equivalent to 'are.' The plain meaning of the enactment is that the trader shall be assessed according to his actual profits; and these profits will be ordinarily computed by the profits which he has made in the preceding year. I do not attempt, therefore, by any precise definition, to guide the Collector in his estimate of the profits at which the trader should be assessed. Such an attempt would only be calculated to raise questions which it has always been deemed expedient to avoid in framing laws for the collection of the public revenue.

By the provisions to which I have referred, the functions of the Collector, and the duty of the Magistrate, will be distinctly separated. To the Collector is assigned, in the first instance, the determination of the class in which every person liable to the tax shall be assessed. The Magistrate has only to adjudicate the penalty according to the assessment of the Collector, or the decision of the Commissioner of Revenue, as the case may be.

As the Bill does not affect the principle of the Act, and as it is desirable that the collection of the tax should proceed without further delay, I shall ask you, Sir, to suspend the Rules for the Conduct of Business, in order that the Bill, if agreed to by the Council, shall pass through its stages and become law forthwith."

The Motion was put and agreed to.

The Right Hon'ble MR. MASSEY then applied to His Excellency the President to suspend the Rules for the Conduct of Business.

The PRESIDENT declared the Rules suspended.

The Right Hon'ble MR. MASSEY then introduced the Bill, and moved that it be taken into consideration.

The Hon'ble MR. MAINE said that, like his Right Hon'ble friend, he should, in speaking of the Act to be amended, confine himself to its mechanism, and say nothing of its principle or policy. He agreed with Mr. Massey that one particular Section of Act XXI of 1867 might possibly be found to work unsatisfactorily in one of the Presidency towns, or even in all of them. It was necessary, however, to explain that the procedure Sections of his Right Hon'ble friend's Act were not new law, but old. They were substantially drafted by Sir H. Harington five or six years ago, and were by him submitted to the former Legislative Council. They were then adopted by the Bengal legislature, and

they, in fact, constituted the law under which the Municipal License Tax had been for four years collected in Calcutta. Now Mr. Massey had stated that he had it in contemplation to hand over the proceeds of this license tax to the Local Governments, and it was probable that, if every province in India had a legislature of its own, permission would have been given to it by His Excellency, under the Indian Councils' Act, to tax itself to the amount required. Mr. Massey had further consistently declared that this tax was not an income but a license tax, and the Council was well aware, from the discussions last Session on the Panjáb Municipal Act, that whenever a local body in India was trusted to tax itself, a license tax was, perhaps, the least objectionable in principle of the imposts to which it had recourse. Hence, it was natural that his Right Hon'ble friend, intending to create a local tax for convenience sake by imperial legislation, should have been satisfied to extend to all India the law under which the largest and most important self-taxing local body in the country, the Municipality of Calcutta, collected a license duty. It was true that the Municipal License Tax differed somewhat in form from that of his Right Hon'ble friend. As in the case of some of the English license taxes, a fixed annual sum was levied on the trader; but the system was not purely capricious, like that which obtained at home. An attempt was made to include all trades and callings, and to arrange them in five classes. Each class paid a heavier license duty than those below it, and the reason for placing a particular calling in a higher class was obviously a presumption of superior profit. Thus, under the Schedule to the Calcutta Municipal Act, a merchant or a barrister was taxed twice as much as a boarding-house-keeper, and a boarding-house-keeper twice as much as the keeper of a stall in a bazaar. There was no doubt that his Right Hon'ble friend, in taking from Sir H. Harington's Bill the "annual profits" of the trader as the standard of assessment, and in substituting the actual profits for a rough presumption of profit, rendered his own tax juster and fairer than the Municipal License Tax; but MR. MAINE thought it could not be denied that every attempt to add to the equity of a general license tax exposed it to the imputation (from which even the Calcutta Municipal Tax was not free) of being an income tax in disguise. Sir H. Harington's proposed measure, though differing vastly from his Right Hon'ble friend's in respect of the height to which it carried the scale of taxation, and in respect of the per-centage on which the scale was founded, resembled it in taking "annual profits" as the standard of assessment, and in leaving the exact mode of applying the standard to be collected from the context. Morally speaking, there could be no doubt of what Sir H. Harington intended. He had obviously intended to

follow the English licensing Acts, requiring from certain traders annual licenses at varying rates, of which there was a considerable number in the Statute Book. Under all of these Acts the license was for the current year, but the duty was calculated on the extent of the business in the year preceding. The question however remained, whether, from a legal point of view, there was on the face of Act XXI of 1867 an ambiguity in the use of the expression "annual profits." With very genuine respect for the eminent members of his own profession who had expressed an opinion to the contrary, MR. MAINE was compelled to agree with Mr. Massey that there was none. To much which had been said and written, it was enough to oppose the doctrine of one of the most distinguished of English Judges:—

"If the subject-matter to which an Act of Parliament applies, be such as to make a given construction of its clauses impossible or irrational, I cannot for a moment doubt the right and the duty of a Court to have regard to such subject-matter, as necessarily bearing on the legal construction of the Act."

This very principle of construction had recently been expressly declared applicable to Acts imposing duties. But it was not necessary to enter into a lengthened argument on the point, for which the time and the place were not very appropriate, since his Right Hon'ble friend would impliedly settle it by the words he proposed to introduce into Section 4 of the amending Bill—not certainly because his Right Hon'ble friend wished to do indirectly that which he had just disclaimed the intention of doing directly, but because it was really impossible to apply the theory of the law to any particular case, without rendering it apparent that the intention of the legislature was to adopt as the standard of assessment the profits of the year preceding the year of assessment. The Section of the Act in which MR. MAINE really thought there was a defect, the 15th, occurred in identical language in Sir H. Harington's Bill, and, with the substitution of 'Justice of the Peace' for 'Magistrate,' in the Calcutta Municipal Act of 1863, and again in the amending Act of 1866. MR. MAINE had himself no doubt that, by the words 'the amount which in the judgment of the Magistrate would have been payable,' Sir H. Harington deliberately intended to give the Magistrate a very wide discretion; and there was an *ex post facto* justification of this in the admissions of all who had taken part in the actual working out of the Income Tax Act. There was much reason to believe that, over the greatest part of India, only arbitrary conclusions, within very wide limits, could be reached on the subject of income or profits, though it did not follow that such conclusions were (and practically they

were not) unjust to the tax-payer. But if in any part of India the Magistrate took the view that, in applying the provisions of this Section, he could only exercise his judgment on strict evidence of annual profits, the result would be such as the legislature had certainly not contemplated. It might not be impossible to supply such evidence, even though the Collector had not under the Act the same materials for influencing the judgment of the Magistrate which he had for guiding his own; but still there would be an unreasonable departure from the principle pervading all revenue laws, English and Indian, under which the power of assessment was confined absolutely to the revenue authorities, and, moreover, the valuable time of the presidency town Magistrates would be taken up with enquiries foreign to their proper functions. It was only right that MR. MAINE should add that perhaps he had himself been the means of aggravating the defectiveness of the Section. The Council might recollect that, when his Right Hon'ble friend first submitted his measure, it included a Section taken from Sir H. Harington's Bill, by which the right to enforce all the contracts of a trader trading without a license was absolutely annulled. MR. MAINE had expressed objections to this Section, and had prevailed on Mr. Massey to omit it. Part of these objections might seem of a somewhat technical character. The English licensing Acts had been repeatedly considered by the English Courts, and it had been laid down as a principle that, when the object of the legislature was to discourage or limit a trade—which was really the object of some of the earlier licensing Statutes—the contracts of the unlicensed trader should be void; but when the object was only to raise revenue, which of course was the case with the present law, the omission to take out a license had no effect on the trader's contracts. That appeared to be a sensible principle, and it seemed to MR. MAINE a strong thing to set it aside. But the ground of his strongest objection was that the punishment appeared to him out of all proportion to the offence. The provision could be understood in Sir H. Harington's Bill, for there the scale of taxation went up as high as five hundred pounds; but the highest sum payable by an individual under his Right Hon'ble friend's Bill, as originally prepared by him, was twenty pounds, and it did seem harsh to visit the non-payment of this or smaller sums by consequences which might be so extremely serious, particularly in the presidency towns. They knew under what conditions of climate and otherwise business was there carried on. It might happen that a young partner or assistant had forgotten that the first of May had arrived; the effect would be to annul all the contracts of the firm until the omission was rectified, and thus transactions to the amount of lákhs of rupees might be compromised. But, though MR. MAINE was satisfied it was right to omit the Section, the omission

had doubtless weakened the procedure. The dangers of which he had spoken were rather those of future years than of the present. For the first year, at all events, men would have hastened to take out their licenses, and the practice of the Act would have tallied with the theory. As it was, the stress of the procedure was thrown on the penal Section, which, in MR. MAINE'S opinion, was too weak to bear it, so far as certain parts of the country were concerned. He concurred, therefore, in the necessity of his Right Hon'ble friend's amendments, which doubtless carried out the real intentions of the legislature, and, as under the English fiscal system, conferred a power of absolute assessment on the revenue authorities.

The Right Hon'ble MR. MASSEY wished to add that the Bill had not been suggested by any resistance to the Act, nor had he any serious apprehension that the Act as it stood would not work. But it was right to relieve the tax-payer from all doubt as to his liabilities, and to remove all possible obstacles to the collection of the tax.

The Motion was put and agreed to.

The Right Hon'ble MR. MASSEY then moved that the Bill be passed.

The Motion was put and agreed to.

The Council adjourned till the 19th June 1867.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 12th June 1867.

Office Suptdt. Govt. Printing.—No.—1819. L. C.—6-7-67.—200.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 19th June 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble H. Sumner Maine.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble Sir George Yule, C. B., K. C. S. I.
The Hon'ble John Strachey.

CURRENCY ACT AMENDMENT BILL.

The Right Hon'ble MR. MASSEY moved that the Report of the Select Committee on the Bill to amend Act XIX of 1861 (*to provide for a Government Paper Currency*) be taken into consideration, observing that the Select Committee had only made a verbal alteration.

The Motion was put and agreed to.

The Right Hon'ble MR. MASSEY also moved that the Bill be passed.

The Motion was put and agreed to.

RAILWAY SERVANTS' BILL.

The Hon'ble MR. TAYLOR presented the Report of the Select Committee on the Bill to render penal certain offences committed by Railway servants.

OUDH RENT BILL.

The Hon'ble MR. STRACHEY moved for leave to introduce a Bill to consolidate and amend the law relating to the recovery of rent in Oudh. He said the necessity for legislating on the subject had arisen in consequence of the arrangements which had been made last year by the Government of India for the settlement of the long pending questions respecting rights of occupancy in Oudh. Those arrangements involved the necessity, on the part of Government, of cancelling all orders, rules and circulars which had been in force in Oudh,

and which recognized a right of occupancy in non-proprietary cultivators. The Taluqdárs at the same time had entered into agreements by which certain privileges were to be secured to certain classes of cultivators. Legislation appeared necessary to enable the Government to carry out the arrangements to which he referred, and to confirm the concessions so made by the Taluqdárs. The present opportunity appeared to be suitable for placing on a satisfactory footing the law relating to the recovery of rent. Hitherto it had been extremely hard to say what the law really was on the subject; hence great diversity of procedure had arisen in different districts. This had been found to be a serious evil, and the practice of the Revenue Summary Courts in Oudh was not only uncertain, but dilatory. It was obviously desirable that the practice of those Courts should correspond with that of the adjacent provinces, so far as this was practicable without injury to local interests. He had therefore introduced into his Bill those portions of Act X of 1859 and of Act XIV of 1863 which appeared applicable to Oudh. He had provided that the Code of Civil Procedure should, with some slight additions and alterations, apply to the Revenue Summary Courts, in suits under the proposed enactment; and this, he might observe, would be peculiarly convenient, as in Oudh the same officers presided over the Civil and the Revenue Courts. The Bill contained certain Sections intended to confirm the agreements of the Taluqdárs in respect of rights of occupancy and other privileges to be conferred on tenants. These clauses did not altogether correspond with the rules agreed to last year by the Taluqdárs. But the more important changes had already been approved by the Taluqdárs, and respecting a few changes that had not hitherto been communicated to them, a reference would, before the Bill became law, be made to them by the Chief Commissioner of Oudh.

The Motion was put and agreed to.

The Council adjourned till the 26th June 1867.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (*Legislative*).

SIMLA,
The 19th June 1867.

Office Supdt. Govt. Printing.—No. 1908 L. C.—8-7-67.—185

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 26th June 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble H. Sumner Maine.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble Sir George Yule, C. B., K. C. S. I.
The Hon'ble John Strachey.

RAILWAY SERVANTS' BILL.

The Hon'ble MR. TAYLOR moved that the Report of the Select Committee on the Bill to render penal certain offences committed by Railway servants be taken into consideration. He said that the Committee had made only one alteration in the Bill. Section 161 of the Indian Penal Code, within the meaning of which Railway officials were to be deemed public servants, defined "legal remuneration" to include all remuneration which a public servant was permitted to accept by the Government he served. Now as it could not be strictly said that Railway officials served the Government (for their salaries were fixed and paid by the Company), it became necessary to extend the definition so as to make the word "Government," for the purposes of the proposed Act, include a Railway Company. This the Committee had done by introducing a short Section, and, with this addition, he hoped and believed that, if the Bill became law, it would attain the object for which it had been framed.

The Motion was put and agreed to.

The Hon'ble MR. TAYLOR then moved that the Bill be passed.

The Hon'ble MR. MAINE said, that he thought the Council would regard his Hon'ble friend's Bill as one of those which might be passed at a meeting like the present. It was a simple, but at the same time an urgent, matter.

The Bill had originally formed one Section of the large measure for consolidating and amending the law relating to Indian Railways. That Bill had been nearly three years before the legislature, the delay having been occasioned by the precautions taken by the Committee in referring the Bill and Report to the several Railway Boards in England, through the Secretary of State. The opinions of the Boards had only been received just before the last regular legislative sittings ended, and it was found that, though there was difference of opinion on several points, there was none on the policy of this particular Section. It was no doubt a pity to dismember a consolidation measure; but it was urgently necessary that the malpractices, against which the Bill was directed and which disturbed the trade of the whole country, should be suppressed. The great current of goods traffic down the Railways would begin to flow in September and October, and it was most desirable that, before it commenced, Railway servants should have ample notice of the new position in which they were placed.

MR. MAINE desired, not for the information of the Council, but for the purpose of correcting or preventing misapprehensions which might exist elsewhere, to add a few words as to the reasons for passing urgent measures at meetings like the present. All his Hon'ble colleagues well knew that it was simply impossible to keep the Council for making Laws and Regulations together at any one place whatsoever in India for more than a few months. The organization given to the Council by the Indian Councils' Act, and the instructions simultaneously issued by Her Majesty's Government, which were binding on the Government of India, rendered this result inevitable. It was a consequence, not solely of the fact that the Native non-official members could not be kept from their homes for more than a limited time, nor again solely of the converse fact that the European non-official members could not practically attend at places which Native chiefs and gentlemen of rank visited with less reluctance than they did Calcutta—it was a consequence chiefly of the fundamental rule which distinguished the present legislature from the former Legislative Council, the rule that the official additional members, who naturally bore most of the burden of legislative work, should not be persons appointed and salaried to do nothing but legislate, but should continue to make their ordinary executive or judicial functions their principal occupation. It was doubtless with a view to the consequences of the fundamental distinction which it was intended to create that the Indian Councils' Act for the first time conferred on the Governor General a new power of legislating in emergent cases by Ordinance, without the advice of any Council—executive or legislative. But MR. MAINE apprehended that when a quorum (though even a

bare quorum) of the Council could be obtained, the Governor General would often prefer, and that His Excellency personally preferred, submitting to it urgent legislative measures, on account of the greater opportunities of discussion and of explaining the grounds of action which were afforded by a meeting at which even a limited number of members were present. Apart, however, from emergent measures which were submitted to the Council as an alternative selected by the Governor General in preference to legislation by Ordinance, MR. MAINE considered (and he felt sure the whole Council would agree with him) that it would be very wrong to proceed, at meetings at which it was difficult or impossible for most of the additional members to be present, with any business of importance or on which material difference of opinion might arise. There were two classes of measures only (independently of urgent measures) which MR. MAINE considered legitimately submitted to the Council when it was not full. These were trifling measures, of course and of routine, and measures on which every body entitled to speak with authority had spoken. Measures of this last description constituted a not inconsiderable part of the Council's business, and they were always passed by the Council, even when full, more on the responsibility of the authorities recommending them than on that of the Council itself. Certainly, at the present sittings, the Legislative Department had no intention of asking the Council to consider any measure which did not belong to the classes specified.

The Hon'ble MR. TAYLOR expressed his concurrence in Mr. Maine's observations, and said that this Bill came within the second category of measures mentioned by his Hon'ble and learned friend.

The Motion was put and agreed to.

CHIEF COMMISSIONERS POWERS' BILL.

The Hon'ble MR. MAINE moved for leave to introduce a Bill to enable the Governor General of India in Council to delegate to a Chief Commissioner any power conferred on a Local Government by an Act of the Governor General of India in Council. He said that the necessity for this Bill arose from the technical distinction between Lieutenant Governorships and Chief Commissionerships. A Lieutenant Governor was the Local Government, but theoretically the Governor General in Council, and not the Chief Commissioner, was the Local Government of the territories forming a Chief Commissionership. Several Acts of the Legislative Council had, from time to time, conferred powers on the Local Governments *eo nomine*. These powers might just as well be exercisable by a Chief Commissioner in respect of the territories under his administration as by the Governor General in Council; and the enabling

the Governor General in Council to delegate these powers to Chief Commissioners would not only relieve those officers from making numerous references, but would also do away with much work now needlessly performed by the Supreme Government. The Bill, if it became law, would also enable the Council in future to shorten their enactments by omitting the clause which was now usually inserted providing that the term "Local Government" should be deemed to include a Chief Commissioner.

The Motion was put and agreed to.

SALTPETRE ACT AMENDMENT BILL.

The Right Hon'ble MR. MASSEY moved for leave to introduce a Bill to amend Act No. XXXI of 1861 (to regulate the manufacture of Saltpetre and the sale of salt educed in the refinement thereof). He said that this Bill came within the first of the categories mentioned by his Hon'ble friend (Mr. Maine). It was one of comparatively small importance. It proposed merely to rectify an obvious oversight in the drafting of Section 6 of the Saltpetre Act. That Section provided, that any offender against the Act should be liable "to a fine of rupees 500, and on non-payment thereof to imprisonment." On this the High Court at Agra had ruled—with perfect propriety, if he, MR. MASSEY, might say so—that the convicting Magistrate could not impose a less penalty under that Section. This limitation of the Magistrate's power was obviously inexpedient, as cases might easily be imagined in which such a fine would be out of all proportion to the magnitude of the offence. The Bill, therefore, proposed to make the fine a maximum only, and this it did by simply substituting the words "fine not exceeding rupees 500," for "fine of rupees 500." The Bill, he might observe, had been framed at the desire of the Lieutenant Governor of the North-Western Provinces.

The Motion was put and agreed to.

The Council adjourned till the 3rd July 1867.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 20th June 1867.

Office Supdt Govt Printing —No 2050 L. C.—13-7-67 —180

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 3rd July 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble H. Sumner Maine.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble John Strachey.

CHIEF COMMISSIONERS POWERS' BILL.

The Hon'ble MR. MAINE introduced the Bill to enable the Governor General of India in Council to delegate to a Chief Commissioner any power conferred on a Local Government by an Act of the Governor General of India in Council, and moved that it be referred to a Select Committee, with instructions to report in a week. He said that the Bill was so short and simple that, under ordinary circumstances, he would not have thought of referring it to a Select Committee. But as a Chief Commissioner (Mr. Strachey) was present, it would be as well to take advantage of his experience on the subject, and to refer the Bill to a Committee composed of Mr. Strachey and himself.

The Motion was put and agreed to.

SALTPETRE ACT AMENDMENT BILL.

The Right Hon'ble MR. MASSEY introduced the Bill to amend Act No. XXXI of 1861 (to regulate the manufacture of Saltpetre and the sale of Salt educed in the refinement thereof), and moved that it be referred to a Select Committee, with instructions to report in a week. He said that, in describing the Bill at their last meeting, he had stated that its object was to rectify an oversight in the drafting of Section 6 of the Saltpetre Act. On consideration, however, he doubted whether the wording of the clause referred to was not intentional, and he was inclined to think that the draftsman had taken as his

model the English Excise Acts, which left no discretion to the convicting Magistrate as to the amount of the fine for infringing their provisions, such discretion being reserved for the Commissioners of Inland Revenue. India, however, was differently situated from England in this respect, and the difficulties which a person convicted under Section 6 might experience, in bringing his case properly before the Executive, were or might be so numerous that he (MR. MASSEY) could not believe that the legislature intended to make the law so stringent. At all events, the Bill was justified by the fact that it was prepared at the desire of the Local Government, which was of opinion that the discretion proposed to be conferred by the Bill might safely be entrusted to the convicting Magistrate.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to enable the Governor General of India in Council to delegate to a Chief Commissioner any power conferred on a Local Government by an Act of the Governor General of India in Council—The Hon'ble Mr. Strachey and the Mover.

On the Bill to amend Act No. XXXI of 1861 (to regulate the manufacture of Saltpetre and the sale of Salt educed in the refinement thereof)—The Hon'ble Mr. Maine and the Mover.

The Council adjourned till the 10th July 1867.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 3rd July 1867.

Offg. Supdt. Govt. Printing.—No. 3148 L. C.—29-7-67.—180.

Abstract of the Proceedings of the Council of the Governor General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 10th July 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble H. Sumner Maine.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble John Strachey.

CHIEF COMMISSIONERS POWERS' BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill to enable the Governor General of India in Council to delegate to a Chief Commissioner any power conferred on a Local Government by an Act of the Governor General of India in Council.

MADRAS SALT BILL.

The Hon'ble MR. MAINE also moved for leave to introduce a Bill to repeal Act No. XIX of 1866 in the places to which the Madras Salt Excise Act, 1867, may be made applicable. He said the Bill was rendered necessary by a merely technical difficulty. In July 1866, His Excellency the Governor General had given permission for the introduction of a Bill into the local legislature of Madras, to legalize the adoption of the excise system of salt revenue on the western coast of that Presidency, and there to fix, subject to the approval of the Government of India, the rate of duty on imported salt, and the selling price of such salt as the local Government might continue to import and sell at their own depôts. But his Right Hon'ble friend Mr. Massey had recently carried a measure through the Council to enhance the price of salt sold in Madras by Government. For this purpose that measure (Act XIX of 1866) substituted a new Section for Section 43 of Act No. VI of 1844. The Madras legislature now desired, under the circumstances mentioned in their Bill, to get rid of both Acts, and here arose the difficulty They were able to repeal the

latter Act, but not the former, as it had been passed by the Council of the Governor General since 1861. The present Bill was therefore necessary in order to repeal Act XIX of 1866, and thus to remove the obstacles which lay in the way of the legislation proposed in the Madras Council.

The Motion was put and agreed to.

SALTPETRE ACT AMENDMENT BILL.

The Right Hon'ble MR. MASSEY presented the Report of the Select Committee on the Bill to amend Act No. XXXI of 1861 (to regulate the manufacture of Saltpetre and the sale of Salt educed in the refinement thereof).

The Council adjourned till the 17th July 1867.

SIMLA,
The 10th July 1867.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

Office Supdt. Govt. Printing.—No. 3171 L. C.—30.7.67.—150.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 *&* 25 *Vic., cap.* 67.

The Council met at Simla on Wednesday, the 17th July 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble H. Sumner Maine.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble Sir George Yule, C. B., K. C. S. I.
The Hon'ble John Strachey.

CHIEF COMMI[illegible]

The Hon'ble MR. MAINE n[illegible]
on the Bill to enable the Gov[illegible]
a Chief Commissioner any pow[illegible]
of the Governor General of In[illegible]
Committee had made no chang[illegible]

The Motion was put and a[illegible]

The Hon'ble MR. MAIN[illegible] had previously explained that the object of the Bill was to supply a clause, which was inserted as a matter of course in all recent enactments, but which in earlier enactments was wanting. It was certainly absurd that, when the Council applied a law to the whole of India, in Bengal, for instance, the law came into operation at once, whereas in Oudh a previous reference and orders passed thereon were necessary—orders which could only be of one kind. With reference to the distinction between a Lieutenant Governor and Chief Commissioner, MR. MAINE would observe that far the largest number of the functions of a Lieutenant Governor were exercised under the authority of the Act of Parliament which gave him the executive government of his territories, and not under any Act of the Indian legislature, and it would probably be beyond the power of this Council to grant a Chief Commissioner the full powers of a Lieutenant Governor.

The Hon'ble MR. STRACHEY thought it was hardly necessary to add anything to what M[illegible] but as he himself was one of the Chief Commissioners wh[illegible]ect, he was bound to express his opinion [illegible]t it would be e[illegible] thought it desirable to guard against [illegible]ossible miscon[illegible] The additional powers which the Bill, [illegible] became law, [illegible]comer, were comparatively small. He had looked through all the Acts conferring powers on a Local Government, and he found that, even if the Government of India exercised to the utmost the right of delegation which the Bill proposed to entrust to the Governor General in Council, the actual increase of power given to the Chief Commissioners would not be great. The utility of the proposed measure would appear, not so much in matters of real and exceptional importance, as in details of every-day routine; and it would have the effect of saving the Government of India and the Chief Commissioners from a great amount of useless correspondence. It surely was little better than absurd that the Chief Commissioner of Oudh (he quoted that Chief Commissioner because he, MR. STRACHEY, knew more of him than of the others), who possessed, under orders which had the force of law, [illegible]lenary authority and power of control in all departments," who could [illegible] murderer condemned to death, or commute his sentence, should not b[illegible] move a man sentenced to imprisonment for ten days from one jail to [illegible]or order the confinement of a criminal lunatic in a lunatic asylum, wit[illegible]ious reference to the Government of India. It was anomalies of this [illegible]he Bill would remove.

Th[illegible]was put and agreed to.

SALTPETRE ACT AMENDMENT BILL.

The Right Hon'ble MR. MASSEY, in moving that the Report of the Select Committee on the Bill to amend Act No. XXXI of 1861 (to regulate the manufacture of Saltpetre and the sale of Salt educed in the refinement thereof) be taken into consideration, said that the Bill consisted of a single clause, and that the Committee had made no alteration therein.

The Motion was put and agreed to.

The Right Hon'ble MR. MASSEY then moved that the Bill be passed.

The Motion was put and agreed to.

MADRAS SALT ACT.

The Hon'ble MR. MAINE introduced the Bill to repeal Act No. XIX of 1866 in the places to which the Madras Salt Excise Act, 1867, may be made applicable, and moved that it be referred to a Select Committee with instructions

to report in a week. He said that he had explained at their last meeting that the Bill was merely intended to remove a technical obstruction in the way of the Madras Council, which had been empowered by His Excellency the Governor General to legislate on the subject of Salt Excise.

The Motion was put and agreed to.

OUDH TALUQDÁRS' BILL.

The Hon'ble MR. STRACHEY moved for leave to introduce a Bill to define the rights of Taluqdárs and others in certain estates in Oudh, and to regulate succession thereto. He said :—

"Sir,—In introducing this Bill, I feel that I am undertaking a difficult task. It is difficult, not only from the nature of the subjects of which I shall have to speak, but for other reasons also. There have been few questions of Indian politics which, of late years, have created so much public interest as the questions connected with the history of Oudh since its annexation by the British Government, and no Indian questions have been discussed with greater warmth, and, I may add, with greater acrimony. I cannot now omit referring to the past, but so far as it may be practicable, I shall endeavour to avoid re-opening questions which have, as we may hope, been closed.

The main object which I have in view in asking for permission to introduce this Bill is a very simple one. That object is to confirm by law the arrangements affecting the rights of Taluqdárs and others in Oudh, which were made under the orders of Lord Canning after the re-occupation of the province in 1858. Those orders have placed the Taluqdárs of Oudh in an altogether peculiar position. They hold their estates upon a tenure unknown in any other part of India, and rights have been created by the British Government which it is now necessary to protect by law. Although, Sir, this main object of the Bill is sufficiently simple, I must endeavour to explain the circumstances under which such legislation seems now to be called for, and this I can hardly do satisfactorily, unless I give a sketch of the principal features of the policy which the Government has, of late years, followed in Oudh, and under which these peculiar rights of the Taluqdárs have grown up.

Early in 1856, in consequence of the atrocious misgovernment of the country, the British Government determined upon the annexation of Oudh. The instructions issued to the Chief Commissioner by the Governor General in Council, laid down in detail the principles upon which the administration

was to be conducted. My only concern now is with that part of those instructions which referred to the settlement of the Land Revenue.

"The settlement," it was ordered, "should be made village by village, with the parties actually in possession, but without any recognition, either formal or indirect, of their proprietary right. * * It must be borne in mind, as a leading principle, that the desire and intention of the Government is to deal with the actual occupants of the soil, that is, with village zamindárs, or with the proprietary coparcenaries which are believed to exist in Oudh, and not to suffer the interposition of middlemen, as Taluqdárs, farmers of the revenue, and such like: the claims of these, if they have any tenable claims, may be more conveniently considered at a future period, or brought judicially before the Courts competent to investigate and decide upon them."

These orders were based upon the assumption that the Taluqdárs of Oudh were, ordinarily at least, not proprietors but middlemen for the collection of the revenue between the village proprietors and the Government. There can, I think, be now no doubt that this was a mistake. There were doubtless exceptions; but, speaking generally, the Taluqdárs of Oudh constituted an old landed aristocracy possessing undoubted rights of property in the soil, and even when their estates had been acquired in modern times, and perhaps by acts of spoliation and violence, they were in no sense middlemen for the collection of the revenues of the Government. They were in possession of their estates as proprietors, even though that possession may have been wrongful. I do not mean to say that they were the only persons with rights of property in the soil. They were proprietors in the Indian, not in the English sense of the term. When we annexed Oudh, two-thirds of the province were in the possession of these Taluqdárs.

For the first season after our assumption of the Government, the estates of the Taluqdárs were left with them undisturbed; but in 1856-57, another settlement was made upon a totally different principle. The assumption that Taluqdárs were interlopers with no rights of property, was acted upon in the extremest manner. It has been said that the principles which were carried out in Oudh, were merely those which had been carried out in the North-Western Provinces. I shall not now attempt to go into that question, but I believe the truth to be quite otherwise. It is the fashion now-a-days to find fault with the principles on which the settlement of the North-Western Provinces was made. For my part, although I should be sorry to say that no injustice was ever done, or that no mistakes were committed, I believe that the settlement of the North-Western Provinces was based upon principles that were wise and just; and in spite of all that has happened, I believe that it is in a great measure to the application of those principles that the North-Western Provinces have owed and still owe their almost unexampled state of prosperity. I cannot say

the same for the settlement that was made in Oudh in 1856-57. That settlement, although professedly in accordance with the system that had been followed in the North-Western Provinces, was, as it appears to me, made in absolute contradiction to one of the fundamental principles on which the settlement of the North-Western Provinces was based. That principle was thus described by Mr. Thomason,—

"The system," he said, "can be introduced into any part of the country, and adapted to the existing state of property, whatever that may be. One of its chief features is that it professes to alter nothing, but only to maintain and place on record what it finds to exist. Rights which are held undisputed, are confirmed; those which are ambiguous, are defined and rendered certain; those which are contested, are authoritatively fixed and placed in the possession of the party which is considered best entitled."

This was always insisted upon by Mr. Thomason; and although in an operation of such magnitude as the settlement of the North-Western Provinces, many errors may have been, and undoubtedly were, committed, the principle laid down was this, that no new rights were to be created, and that no change was to be made in existing rights, or in the mode of their exercise, without the full concurrence of those whose interests were affected. If this principle had been acted upon in Oudh in 1856, justice would have been done to all classes. But, in practice, if a man bore the title of Taluqdár, I fear that this was very commonly held to dispense with the necessity for any further inquiry into the facts. He and his ancestors might have held undisputed proprietary possession of an estate for generations, but he was a Taluqdár, and therefore a mere middleman with no valid claims to consideration.

At the first summary settlement made on the annexation of the province, for a single season, the revenue paid by the Taluqdárs to the Government amounted to about 66 lákhs of Rupees, and they were in possession of 23,500 villages. At the settlement of 1856-57 they were summarily dispossessed from about one-half of this property. In many cases they lost very much more than this. We found, for example, Mahárájá Mán Singh in possession of 577 villages, paying to Government more than two lákhs of Rupees a year. The settlement of 1856-57 left him with six villages, paying Rupees 2,900. What the private income may have been of which he was thus deprived, I cannot say; but I suppose that I shall not be exaggerating if I say that his income of £20,000 was suddenly reduced to £300 a year. This, it is true, was not an old ancestral estate, but many of the oldest families in the province were treated in the same manner. In one ancient estate, out of 378 villages, 266 were taken away. In another very ancient estate, out of 204 villages, 155 were

taken away. In the estate of Rájá Hanwant Singh, consisting of 322 villages, paying between seventy and eighty thousand Rupees a year as Government revenue, 200 villages, which had been in the undisputed possession of his family for many generations, were taken from him. In this last case, the officers who had made the settlement took refuge, on the outbreak of the rebellion, in the Rájá's fort, and while they were there, they saw the men with whom the settlement had been made come in and tender their allegiance to the Rájá.

"Without making any boast of it," writes Colonel Barrow, "he daily pointed out to me men who had been under him and his ancestors for generations, voluntarily retiring from the position in which we had placed them, and again ready to take engagements from him on his own terms. There can be no doubt that the mutual understanding between the parties was such that it should never have been disturbed by us."

I do not mean to say that many of these settlements which were made with the old proprietors of the soil, to the exclusion of the Taluqdárs, were not substantially just; but, speaking generally, I believe that the sweeping injustice of the settlement of 1856-57 in Oudh could hardly be over-stated. It practically amounted, without, in my opinion, any reasons to render it necessary or even expedient, to the confiscation of property worth several millions sterling. This is of course said upon the assumption that the main features of this settlement would have remained unaltered; but it is true that, when the mutinies of 1857 commenced, the settlement operations were incomplete, and it is probable that much of this injustice might have been remedied. But all that was then apparent was that a Taluqdár who was ousted from the settlement would get nothing. In the North-Western Provinces, under similar circumstances, a considerable portion of the rental was always assigned to the Taluqdár. In Oudh he received nothing at all, beyond a general intimation that, if he had any claims to make, they would be heard at some future time. However this might have turned out ultimately, the Taluqdárs had, at the time, good reasons for believing that the maintenance of the British Government signified to them the loss of the greater portion of the property which they had formerly possessed, and the consequence was that, with a few exceptions, they gave their whole influence to help the overthrow of our power. Thus, since the people everywhere followed the Taluqdárs, it happened that, in Oudh alone, among all the provinces of our Indian Empire, the mutiny of the army led to a general rebellion of the people.

Lucknow was re-captured in March 1858, and it was then that Lord Canning issued his famous proclamation confiscating to the British Government, with certain exceptions, the proprietary right in the whole soil of Oudh.

The Council will remember the discussions regarding this proclamation which took place, not only in India, but in the English Parliament, and how this matter became for a time one of imperial interest, involving the fate of an English Government. This proclamation has altogether a strange history. When it was first issued, there is not a doubt that it was intended as a measure of coercion and of punishment, and especially as a measure of punishment to the rebellious Taluqdárs. It would have seemed incredible in March 1858, that this proclamation should come to be looked upon by the Taluqdárs as the Magna Charta on which all their rights depend.

During the rebellion I believe that, as a matter of fact, hardly anybody to whom the proclamation was addressed ever saw it, and it was supposed for some time to have been virtually a dead letter. This belief was entertained by the Secretary of State, Lord Stanley, nine months after the issue of the proclamation, and after he had received the explanations of the Governor General regarding it.

"I observe with satisfaction," Lord Stanley wrote, "that the policy indicated in the document adverted to, as regards the claims of the Taluqdárs and other proprietors in Oudh, has not in practice been adopted by you, and is declared, on your own authority, never to have been intended to have been carried into effect. However indiscriminate and unsparing may have been the sentence of confiscation which your proclamation pronounced, that sentence has not been put in force; and the issuing it would appear to have been merely a menace, designed to strike awe into the minds of those still arrayed in arms against the British Government."

In truth, however, this proclamation, although it was never carried into effect according to the intention with which it was issued, turned out to be something very different from a menace. It became the means of rewarding and benefiting the very men, the Taluqdárs, whom Lord Canning had originally desired to punish, and of placing them in a far better position than that which they had held under the Native Government. This was the result of the measures taken by the Chief Commissioner, Sir Robert Montgomery, for the pacification of the province. To those measures I must now refer.

In the beginning of 1858, the great object of the Government was that peace should be restored with the least possible delay, and with the least possible sacrifice of British soldiers. Lucknow was captured in March 1858, but there were no means of re-occupying the province, the whole of which from one end to the other was in open rebellion.

"Thus," writes Colonel Barrow, "Sir Robert Montgomery found himself at the head of a newly constituted Commission without the means of giving his officers the slightest aid to

assume their functions. There was the general distrust to overcome, besides a host of large landholders protected in their forts, with countless dependents to defend them, and no sufficient force to coerce the rebellious. We might, it is true, have remained passively in possession of what we had, until the army was prepared to assist the civil power; but this course little suited the Chief Commissioner, who, with the large staff of officers at his disposal, determined to and did overcome all difficulties."

The proclamation confiscating the whole of Oudh, of which I have just spoken, gave to Sir Robert Montgomery the means of carrying out his policy of pacification. The whole province was at his disposal, and he was soon assured that his measures would receive the fullest support from the Governor General. Having no army to work with, he came to the conclusion that it was only with the assistance of the great Taluqdárs that he could bring about the peace that was so much desired. But so long as the Taluqdárs believed that the restoration of our Government signified the re-establishment of a system such as that which had been put in force a year before, and which deprived them of the greater portion of their estates, it was hopeless to expect anything but opposition from them. The first condition of peace seemed, therefore, to Sir Robert Montgomery, to be the total abandonment of the policy of the settlement of 1856-57, and the restoration to the Taluqdárs of all, and of more than all, that they had formerly possessed. The Taluqdárs were invited by a notification issued by the Chief Commissioner's orders in June 1858, to come to Lucknow and make their submission, and they were told that, on their arrival, they would be informed of the terms upon which they would be secured in possession of the estates which they had held under the Native Government. Passes were sent to them, permitting them to come unmolested to Lucknow, and they were told that, if they did not like the terms that were offered, they would be allowed to return. Thus, as Sir Charles Wingfield has observed, the Taluqdárs were "regarded more in the light of "belligerents than rebels, and they were invited to come to Lucknow under a "safe-conduct to hear the terms of peace rather than the conditions of pardon." The result of these negociations was that, before the army took the field in Oudh at the end of 1858, and before the publication of the Queen's amnesty, two-thirds of the Taluqdárs had tendered their allegiance, and estates paying to Government 52 lákhs of Rupees a year, or half the revenue of the province, had been settled with them.

The political engagements thus entered into with the Taluqdárs formed the basis of the subsequent policy of Lord Canning, and I think that these engagements really possess as much importance as the formal sanads themselves, which were afterwards granted to the Taluqdárs. A distinguished officer,

thoroughly acquainted with all the history of those times, once said to me that these engagements with the Taluqdárs ought to find a place in Mr. Aitchison's Collection of Treaties, and in saying this, as it seems to me, he really hardly went beyond the truth. I entirely agree with Sir Charles Wingfield, who said that, in deciding questions of the rights of Taluqdárs and others in Oudh, it must always be remembered that the revenue law and precedents of other provinces are not the only things to be looked to, nor even considerations of abstract justice and expediency, but that the public honour and good faith of the Government are also deeply involved.

The nature, Sir, of the engagements actually entered into with the Taluqdárs may be easily stated.

In October 1858, Lord Canning, fully adopting the principles on which Sir Robert Montgomery had acted, issued the following orders :—

"Recent events," it was stated, "have very much shaken the Governor General's faith in the stability of the village system, even in our older provinces, and his Lordship is therefore all the more disposed to abandon it in a province to which it was unknown before our rule was introduced in 1856. The Governor General is well aware that, in some of the districts of the North-Western Provinces, the holders of villages belonging to Taluqdárs, which had been broken up at the settlement, acknowledged the suzerainty of the Taluqdár as soon as our authority was subverted. They acted, in fact, as though they regarded the arrangement made at the settlement as valid, and to be maintained, just so long as British rule lasted, and no longer; and as though they wished the Taluqdár to re-assert his former rights and resume his ancient position over them at the first opportunity. Their conduct amounts almost to an admission that their own rights, whatever these may be, are subordinate to those of the Taluqdár; that they do not value the recognition of those rights by the ruling authority; and that the taluqdárí system is the ancient indigenous and cherished system of the country. If such be the case in our older provinces, where our system of government has been established for more than half a century, during twenty years of which we have done our best to uphold the interest of the village occupant against the interest and influence of the Taluqdár, much more will the same feeling prevail in the province of Oudh, where village occupancy, independent and free from subordination to the Taluqdárs, has been unknown. Our endeavour to better, as we thought, the village occupants in Oudh, has not been appreciated by them. It may be true, as stated in the memorandum, that these men had 'not influence and weight enough to aid us in restoring order,' but they had *numbers*, and it can hardly be doubted that, if they had valued their restored rights, they would have shown some signs of a willingness to support the Government which revived those rights. But they have done nothing of the kind. The Governor General is, therefore, of opinion that these village occupants, as such, deserve little consideration from us. On these grounds, as well as because the Taluqdárs, if they will, can materially assist in the re-establishment of our authority and the restoration of tranquillity, the Governor General has determined that a taluqdárí settlement shall be made. His Lordship desires that it may be so framed as to secure the village occupants

from extortion; that the Taluqdárs should, on no account, be invested with any police authority; that the tenures should be declared to be contingent on a certain specified service to be rendered; and that the assessment should be so moderate as to leave an ample margin for all expenses incidental to performance of such service. The Taluqdárs may then be legitimately expected to aid the authorities of the Government by their personal influence, and their own active co-operation; and they may be required, under penalties, to undertake all the duties and responsibilities which, by the Regulations of the Government, properly appertain to landholders. These duties and responsibilities should be rigidly exacted and enforced. With the declaration of these general principles, the Governor General leaves the elaboration of the details to your judgment."

These orders of the Governor General were, in reality, as much the confirmation of what had been done already, as instructions for the future, and when they were received, nearly the whole of Oudh had been recovered. Sir Robert Montgomery then proceeded to carry out, by a formal settlement with the Taluqdárs, the principles upon which he had been acting.

The conditions of this "revenue settlement made upon the battle-field," as it was happily termed by Colonel Barrow, through whom almost everything was done, were subsequently amplified and explained from time to time by the Chief Commissioner and by the Government, and they were confirmed in the following year by the sanads which were granted to the Taluqdárs. The main features of these arrangements were the following:—

The Taluqdárs were confirmed in the possession of everything that they had held at the annexation of the province in February 1856, and the rights of the subordinate proprietors were confined to whatever they had actually enjoyed at the same period. The settlement was made with the Taluqdárs, and to them were given all the great advantages, constituting, in fact, a new and valuable property, created by the limitation of the demand of our Government to one-half of the gross rental of the land. The under-proprietors thus retained only that share of the profits which they formerly enjoyed. Sir, it is no part of my duty either to defend or discuss the propriety of these arrangements. They often, in my opinion, bear very hardly upon the ancient proprietors of the soil, whose rights had been overborne by the Taluqdárs. I have condemned the settlement of 1856-57, under which the rights of the Taluqdárs were so greatly curtailed; but the arrangements made in 1858, judged by the light of strict justice, must be pronounced to err, not less widely, in the other direction. Practically, the Taluqdárs have gained everything, and the holders of subordinate rights of property have gained nothing, by the establishment of the British Government in Oudh, beyond the general

advantage to life and property derived from the cessation of a state of things often bordering upon anarchy. But to discuss this subject now seems to me to be useless. The political engagements entered into by the Government have rendered it impossible to alter materially the position of the subordinate holders of property. It is true that the interference of your Excellency's Government during the last three years has removed some of the worst of the hardships that had been suffered by them; but, in essential respects, the arrangements inaugurated, for reasons of political necessity, by Sir Robert Montgomery in 1858, and confirmed and extended by the sanads, remain, and must continue to remain, unaltered.

Having said this much regarding the position of under-proprietors in Oudh, I may remind the Council that various questions affecting them were last year disposed of by the Government, and that the arrangements which were then made received the force of law from Act XXVI of 1866. It will be understood from what I have now said that I should be sorry to undertake the defence of all the provisions of that Act. I can, however, say this much in their favour, that while they have been agreed to by the Taluqdárs, they have placed the under-proprietors generally in a better position than any which could otherwise have been assigned to them by the Government. I may fitly quote, in regard to this subject, the remarks which were recorded last year by the Hon'ble Mr. Grey, and which were concurred in by the Hon'ble Sir Henry Durand, and (if I understand rightly) by the whole of your Excellency's Council:—

"There can be no question," Mr. Grey wrote, "that since 1858, we have to a considerable extent modified, in favour of the under-proprietors, the policy that was then acted upon, and the settlement which has now been effected is a step in the same direction. I think that the Taluqdárs are entitled to the very greatest credit for the concessions which they have consented to make in favour of the under-proprietors; for, in my judgment, the Government could not have enforced all that the Taluqdárs have assented to in respect of the under-proprietors without incurring the imputation of having held out expectations to the Taluqdárs in 1858, in order to induce their submission, which afterwards it was found inconvenient to fulfil. * * I hold that, in the settlement now come to between the Taluqdárs and the under-proprietors, the latter have clearly received a greater amount of consideration than it was contemplated by Lord Canning that they should receive when he issued the orders of October 1858, and than was actually conceded to them in the settlement made under Sir Robert Montgomery's orders."

To return, Sir, from this digression:—After the summary settlement had been made with the Taluqdárs under the orders of Sir Robert Montgomery, on the principles that I have described, it appeared to the Chief Commissioner

that no class of the population had any confidence in the permanence of the arrangements that had been made. The Taluqdárs suspected that their estates had only been restored for a time to purchase their submission, and that they might be deprived of these again at the next settlement, and the village proprietors, on the strength of the measures that had been adopted on the first annexation of the province, hoped the same. The consequence was a spirit of antagonism, and an unsettled state of public opinion. In order to remove these "apprehensions and illusions," Sir Charles Wingfield represented to the Government the necessity of declaring formally that, in respect to the proprietary right in the soil, the settlement that had been made with the Taluqdárs was final. This view was approved by the Government, and the result was the issue to the Taluqdárs of those sanads of which we have all heard so much.

I must now say something of the rights which were conferred by these sanads on the Taluqdárs.

The orders of the Governor General in Council, dated the 10th October 1859, in accordance with which the sanads were issued, declared that—

"Every Taluqdár with whom a summary settlement has been made since the re-occupation of the province, has thereby acquired a permanent hereditary and transferable proprietary right, namely, in the taluqa for which he has engaged, including the perpetual privilege of engaging with the Government for the revenue of the taluqa. This right is, however, conceded, subject to any measure which the Government may think proper to take for the purpose of protecting the inferior zamíndárs and village occupants from extortion, and of upholding their rights in the soil in subordination to the Taluqdárs."

The sanads were issued by Sir Charles Wingfield, who had succeeded Sir Robert Montgomery as Chief Commissioner, in accordance with these orders. The form in which they were granted was sanctioned by the Governor General on the 19th October 1859, and at the same time orders were sent to the Chief Commissioner explaining the intentions of the Government.

It is admitted, I believe, on all hands that the orders of the Governor General, in accordance with which the sanads were granted, have received from the Indian Councils' Act the force of law. There has been a good deal of discussion as to what particular orders are and are not to be looked upon as law; but there is not really much difference in the conclusions that have been arrived at by the highest authorities. We may, I believe, consider that the orders of the 10th and 19th October 1859, and the sanads themselves, constitute together the law upon this subject.

With these sanads, Sir, there commenced, in my opinion, a new phase of Oudh politics. Up to that time, and for some little time afterwards, the principle that had always been insisted upon was this,—that the intention of every act of the Government was to return, so far as rights in the land were concerned, to the condition of things which existed before the annexation of the province.

"As regards the Taluqdárs"—I am quoting from orders of the Government issued in 1860—" the intention of the proclamation of 1858, and of the declarations made and measures taken in October 1859 and subsequently, were, *first*, that in replacing them in possession of their old estates, or in conferring upon them new estates (as the case might be), they should step into such possession, carrying with them the rights and authority which the Taluqdárs of those estates respectively held before annexation, and which the action of our officers in 1856 had impaired; and also carrying with them a new title derived from the Government, from whom alone, as their possession had been confiscated, any titles could be derived; *secondly*, that the Taluqdárs should, by certain obligations imposed upon them, be restrained from the abuse of those rights and that authority."

Up to the time when the sanads were issued I find no sign of the theory which soon afterwards began to take a tangible shape, that the rights conferred upon the Taluqdárs were totally different in their nature and in their extent to the rights which the Taluqdárs had enjoyed under the Native Government.

This theory, if I may so call it, seems to have arisen out of the literal interpretation that was put upon the sanads. Nor, looking at the matter from a purely legal point of view, can I say that it was wrong. The sanads, and the orders under which they were granted, constituting a law, that law must be interpreted by the light which it throws upon itself. There can, I think, be no doubt that, according to this view, the Taluqdár who holds the sanad from the British Government has a strictly personal and exclusive right of property in his estate. Subordinate rights are, under certain conditions, reserved; but all rights other than subordinate, which, at the annexation of the province, existed in the estate, have been entirely swept away. The Taluqdár, instead of holding his estate, as he formerly did, subject to the conditions of the Hindú or Muhammadan, or local law, according to which his power of disposing of ancestral property is very limited, now possesses an absolute power of disposing of his estate either by sale or gift during his life-time, or by will. The effect of this has been to bring about changes in the tenure of land almost greater than those which were caused by the settlement made by Sir Robert Montgomery with the Taluqdárs. And there was another change not less important made soon after the issue of the orders regarding the grant of the

sanads. This was the introduction of the rule of primogeniture for regulating the succession to estates. This also was done under orders of the Governor General, which have, I presume, received from the Indian Councils' Act the force of law. I have spoken of the introduction of the rule of primogeniture; but I ought to add that, although this was a complete novelty in the great majority of cases, a not dissimilar custom, known locally as that of the *gaddi*, had long prevailed in a considerable number of the principal families.

Sir, I am most unwilling to say a word which may seem to throw blame upon the administration of Sir Charles Wingfield, my predecessor in the office of Chief Commissioner of Oudh. He made over to my charge a province which, although it had been only a few years under the British Government, might, I believe, fairly challenge comparison in the general excellence of its administration with any province in India. I cannot state this belief too strongly, and I should feel guilty of something like personal ingratitude if I failed to declare it. But I must confess that it seems to me that Sir Charles Wingfield had a great deal of what I must call that almost superstitious reverence for institutions of a purely English type which is so common among Englishmen. Their ideal country is one with great landlords, unfettered by the claims of kindred or custom, whose estates descend, under the law of primogeniture, undivided to a remote posterity. Now, Sir, I shall not be so rash as to say in this place a word against this belief. But, however good this English idea may be in our own country, I think that it has been worked out in Oudh in a manner which has sometimes led to very strange results.

I will give one or two examples to illustrate what I mean. They will serve to show the nature of the rights which are now claimed by the Taluqdárs of Oudh under their sanads. An estate may have been for many generations in the undisturbed possession of a certain family; it may have been held by them when we annexed the province, and they may have retained it throughout the troubles of 1857. For the sake of giving a little more colour to my picture, I may suppose that this family served the British Government faithfully during the whole rebellion. For some reason or other, perhaps by mere accident, this estate was summarily settled in 1858 with a Taluqdár who had never possessed, or pretended to possess, any rights in it at all, and who had been in open rebellion a few months before. It was accordingly included in the sanad given to him under the orders of the British Government. The Taluqdár is now legally the sole proprietor of the estate, and the former owners neither possess nor can recover any rights in it at all. This at least was the

rule only a few months ago, when the Taluqdárs consented to relax it; and, as the concessions that they have lately made in this respect have not yet been made legally binding, this is still the law.

I will now give another example of a different character.

Before the annexation of Oudh, there may have been two brothers in joint possession of an ancient family estate. One brother had the management of the whole, and gave to the other brother the share of the profits of the estate to which he was entitled. In 1858 a summary settlement was made, to determine the amount of the revenue that was to be paid by each estate to the Government. It was supposed when this settlement was made that it would last only until a regular settlement could be made in the usual way. In consequence of some accident or other, one of our two brothers did not appear when the summary settlement was made. The other brother appeared before the settlement officer, and the summary settlement for the revenue was made with him accordingly. The other brother shortly afterwards came back, and re-assumed, without objection, the position in the estate which had formerly belonged to him. A year or so afterwards he found, to his astonishment, that every right which he had possessed had ceased to exist, and that his brother had become the sole owner of the estate, with absolute power to give away, or sell, or bequeath, the whole or any part of it as he pleased. And on the death of this brother, unless he makes some other disposition of the property, the estate, supposing it to be one to which the law of primogeniture has been made applicable, will descend to his eldest son to the exclusion of the rest of the family. I might, without any extravagance, make this example sound still more strange to English law. I might say that the brother whose rights were thus swept away was the elder brother, who had always had the management of the estate. I might further suppose that this elder brother was, throughout the rebellion, a loyal servant of the Government, while the younger brother who, by a mere accident, became the sole proprietor of the estate, remained until the last moment in rebellion. But these, although really perfectly legitimate suppositions, would only be embellishments not really affecting the case in its legal aspect.

Now, Sir, I admit that these cases that I have supposed are extreme cases, but such cases are the best criterion that can be applied; and it must not be supposed that they are imaginary cases. In all the main principles involved, these cases are really identical with many that have actually occurred, and they represent correctly what I understand to be beyond any doubt the law in Oudh at the present time, according to the view which is held by the highest

legal authorities in the country. If it were necessary, I could give other examples just as extraordinary. Now, Sir, for my part, although these things may be law, I declare them to be, not only utterly unjust, but utterly unmeaning and irrational, and I declare my undoubting conviction that Lord Canning would have scorned the notion that any results so preposterous were the legitimate consequences of his policy.

And this, Sir, brings me to another part of this question. It is a difficult subject for me to speak upon in the presence of your Excellency, and in this Council, but it is a subject upon which I ought not, I think, to remain altogether silent. And I do not see why, because I happen to agree for the most part in the views which your Excellency has taken, I should avoid giving an opinion which, if I had differed from your Excellency, it would clearly have been my duty to declare.

There has been an idea—at one time it was very prevalent, but I hope that it is dying out—that a great line of policy was deliberately and solemnly adopted by Lord Canning in Oudh, and that your Excellency's Government has been systematically and persistently endeavouring to set that policy aside. Now, Sir, I have had for the last year the best possible opportunities of forming an opinion upon this subject, and I wish now to declare my conviction that this idea has no foundation whatever in fact.

It will be understood from the account that I have already given of the measures that have, from time to time, been taken in Oudh, that, in my belief, a very great deal of what is often called the policy of Lord Canning, not only is no proper part of that policy, but is totally opposed to all the principles which that lamented Statesman invariably maintained. From first to last in everything that Lord Canning wrote regarding Oudh, I find evidence of his anxious desire that justice should be done to all classes, so far as this was compatible with the engagements into which he had been forced to enter by the political necessities of the time. It seems to me that, from first to last, the object of your Excellency's Government has been the same. Your Excellency has invariably disclaimed the remotest intention of interfering with the principles of Lord Canning's policy, but has declared it the duty of the Government to remove, so far as was practicable, the blots by which that policy had been needlessly deformed. For my part, I think it clear that they are the truest friends of Lord Canning's policy, who strive to render it consonant with justice, and for this reason I believe that your Excellency's measures have had the effect of giving to that policy a stability which it would not otherwise have possessed. I have said that there have been two policies in Oudh; first, the

policy adopted by Sir Robert Montgomery with the object of restoring peace; and secondly, the policy that grew up out of the sanads given to the Taluqdárs. The first of these policies, if not always just, was, for political reasons, necessary; so at least it was thought at the time. The second policy was, in my belief, not only unnecessary, but altogether inconsistent with the policy that was first adopted by Lord Canning. It is this second policy that has led to almost all the difficulties and hardships that have occurred, and if it had not been for the complications caused by this second policy, the removal of the more serious blots upon the first policy, whether they affected under-proprietary or any other rights, would, I have no doubt, have been a comparatively easy task. I need not refer in detail to the particular points in which your Excellency's Government has thought it right, from time to time, to interfere in Oudh affairs. There may be a reasonable difference of opinion upon some of those points; but the general character of the measures that have been taken seems to me to have been simply this,—that while the policy of Lord Canning was to be strictly adhered to, unjust results which had followed from that policy, and which were never contemplated by its original authors, should, as far as practicable, be removed. I believe that if the life of Lord Canning had been spared we should have heard nothing of these attacks upon your Excellency's Government, for he would have been the first to declare that, when grossly unjust results were apparent, it was the duty of the Government to endeavour to repair them. The course that has been followed by your Excellency's Government in these matters has not been to endeavour to set things right by legislation, for this would clearly have led to much suspicion, and would have exposed the Government to charges of intending to set aside the engagements into which it had formerly entered. The course adopted when it was clear that some extreme injustice had to be remedied, has been to appeal to the good feeling of the Taluqdárs themselves. And I must do the Taluqdárs the justice of admitting that they have shown themselves perfectly ready to take a liberal and reasonable view of these questions. Many of the worst blots upon the policy that had been adopted in Oudh have thus been, if not altogether removed, at least mitigated in their character. I may notice some of the instances in which this has been done. According to the interpretation that was put upon the sanads before your Excellency interfered, the only under-proprietary rights that could be upheld were those which were actually enjoyed just before the annexation of the province. This rule pressed often very hardly and unjustly on old proprietors who, perhaps after holding their lands from time immemorial, had been ousted during the disturbances which prevailed immediately before we took possession of the province. As the law now stands, in accordance with arrangements made with the consent of the Taluqdárs, an

under-proprietor can recover any rights which he held under a Taluqdár at any time during the twelve years preceding annexation. In many other respects, the rules affecting under-proprietary rights have been so modified as materially to improve the position of the under-proprietors. Again, the proprietor of an estate may have mortgaged his estate to a Taluqdár shortly before annexation. Under the interpretation formerly put upon the sanads he could not redeem the mortgage, and all his rights were held to have been transferred to the Taluqdár. This gross injustice has been remedied, and the law has been altered with the Taluqdárs' approval. In the matter also of the rights of tenants, regarding which there has been so much discussion, the result has been that the Taluqdárs have agreed that a large class, estimated by Sir Charles Wingfield at one-fifth of the whole number of cultivators in Oudh, shall receive rights of occupancy, and important protection has been afforded to other classes of tenants also. And, at the present time, I believe that the Taluqdárs, entirely with their own good-will, are engaged at Lucknow in devising means for redressing those very hardships of which, a few minutes ago, I gave such strong examples. In all these cases—and it would be easy to give many other instances—the Taluqdárs have shown a spirit of liberality which does them honour; but it is indisputable that all these results have been obtained in reality through the efforts made by your Excellency's Government to redress the injustice that had occurred, and I believe that, without your Excellency's interference, not one of these results would have been either obtained or thought of.

And, Sir, I could perhaps hardly give a better proof of the real character of the policy which has been followed by your Excellency's Government in Oudh, than this Bill, which I now, with the approval, I believe, of your Excellency, ask leave to introduce. This Bill does not attempt to redress the evils of which I have been speaking. I do not think it right that those evils should be concealed, but I hope that there may be no necessity for interfering by legislation for their redress. No such course should, I think, be adopted, except under extreme necessity. If this Bill pass into law, no one will be able to say that one iota of the engagements entered into by Lord Canning has been set aside. On the other hand, all the legal doubts which may now exist as to the actual nature of the rights of the Taluqdárs will be removed, and the law will secure to them everything to which their sanads declare them to be entitled.

I need not now, Sir, describe in detail the provisions of the Bill which I ask leave to introduce.

So far as the rights of the Taluqdárs are concerned, the Bill is, in essential respects, similar to the Bill which Lord Canning moved for leave to bring into the Legislative Council shortly before he left India. It proposes to give the force of law to all the conditions contained in the sanads of the Taluqdárs. The Bill also defines the manner in which succession by primogeniture, or otherwise, to the estates of Taluqdárs, is to be regulated. Here, also, the principles laid down by Lord Canning have been adhered to.

Legislation upon this last subject has become very urgent. The estates of the Taluqdárs of Oudh are held under altogether peculiar conditions, and, as I have already noticed, their property is of a character unknown to Hindú or Muhammadan law. We have given to the Taluqdárs powers over their estates similar to those possessed by English landlords, but there is no law which regulates the manner in which those powers are to be exercised. For example, the sanads give to a Taluqdár an unlimited power of leaving his estate, or any portion of it, by will, to any one he pleases. But wills are rarely made by Hindús anywhere, and I may say that, in Oudh, they are not known at all. How then is this power of willing away property to be exercised? Only a short time ago, the Judicial Commissioner of Oudh sent to me a case which showed how this question is being practically answered by the Courts, and he represented the necessity for legislation on the subject which this case showed to exist. It has been declared by the Courts, and I believe properly, that no writing or document is absolutely required to legalize any transaction which a Hindú is capable of performing. In the case to which I refer, the Taluqdár was a Hindú lady, and she held her estate under sanad from the British Government. In the exercise of the power given to her, a power utterly unknown to Hindú law or to the former custom of the country, she determined to leave her estate, worth, I believe, some twenty or thirty thousand Rupees a year, out of the regular line of succession, to a person who, if she had died intestate, would have had no claims whatever to the property. I make the following quotation from the judgment of the Court of the Commissioner of Roy Bareilly, by whom the case was disposed of. It will show to the Council very clearly the present state of the law.

"It appears unnecessary," the judgment says, "to go into the question of the genuineness of this will, as the respondent has filed proofs showing that Massamat Goláb Kour verbally appointed him her heir. * * Appellant's claim must be dismissed; for it is clear to me that Massamat Goláb Kour had power to bequeath her estate as she chose, and that even if the will filed by the respondent be rejected as an untrustworthy document, the declaration made by Massamat Goláb Kour to Tahsíldár Ali Buksh is according to Hindú law a valid will. * * It may be a subject for regret that so important a transaction as a testamentary disposition of

property can be made by a woman concealed behind a screen, and invisible to even the witnesses of her spoken wishes, but this is not the question before this Court. The questions to which this Court has to reply are :—

"Did Lord Canning give to Hindú Taluqdárs in Oudh full power to bequeath their estates as they chose ?

"Did Lord Canning confer this power on women as well as on men ?

"According to Hindú law, is the testamentary disposition of her estates made by Mussamat Golább Kour, by her word of mouth, in the presence of Tahsíldár Ali Buksh, a valid and legal testament ?

"Is a nuncupative will legal ?

"To all these questions the Court answers in the affirmative, and upholding the order of the Lower Court dismisses the appeal."

I think, Sir, that I need add nothing more to prove the necessity for legislation. The British Government has created rights which the existing law is incapable of protecting, and it is the evident duty of the legislature to supply the protection which those rights require.

The Motion was put and agreed to.

OUDH RENT BILL.

The Hon'ble Mr. Strachey also introduced the Bill to consolidate and amend the law relating to the recovery of rent in Oudh, and moved that it be referred to a Select Committee with instructions to report in six weeks. He said :—

"The statement which I have just made in moving for leave to introduce a Bill to define the rights of Taluqdárs, will serve also as an introduction to the remarks which I have to make regarding this Bill, and I shall make those remarks as brief as possible. I have already referred to the arrangements made last year for the settlement of the questions which had been long pending, regarding the claims of under-proprietors to sub-settlements, and regarding rights of occupancy. The first part of those arrangements subsequently received the force of law. When, in October last, Sir William Muir introduced the Bill which was passed as Act XXVI of 1866, he explained the reasons which rendered it desirable to postpone legislation regarding that portion of the arrangements entered into with the Taluqdárs which related to the rights of tenants. The fact was that this part of the subject could hardly be disposed of without going into other questions which had not then been sufficiently considered.

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The primary object, Sir, of the present Bill is to give the force of law to the engagements entered into last year by the Government, and to confirm the concessions made by the Taluqdárs in favour of certain classes of tenants. The engagements entered into by the Government involved the necessity of cancelling all orders, rules, and circulars which were in force in Oudh, recognizing a right of occupancy in non-proprietary cultivators, and the revision of the rules regarding the hearing of suits in the Summary Courts, so that these rules might be brought into accordance with the new state of things. I shall say nothing of the reasons which induced the Government to enter into these engagements. They are well known to the Council, and I think it could lead to no useful result to re-open a discussion which has been closed. The practical question now is, in what manner can these engagements be most satisfactorily carried out. I think, Sir, that there can only be one answer to this question. We require an entirely new law to provide for the numerous questions of importance which relate to the recovery of rent, and this law must be framed in a manner which shall carry out the engagements into which the Government has entered.

There can be no doubt that legislation upon this subject would have been urgently necessary, even if the arrangements of last year had never been made. Nothing can well be more unsatisfactory than the present state of the revenue-law in Oudh. I will not weary the Council by attempting to state what that law actually is. The revenue-law of Oudh can only be found, if found at all, buried in the provisions of old Regulations that have long been obsolete throughout the greater part of India, or in orders and circulars more or less doubtful in their authority, and frequently contradictory in the nature of their instructions. The revenue-law, whatever it may be, rests almost entirely upon orders of the Governor General, which have received from the Indian Councils' Act the force of law; but to say which orders have or have not received this confirmation, is often by no means easy. The diversity of procedure actually followed by the Revenue Summary Courts has been excessive. These Courts, although called summary, have been more dilatory and uncertain than any Courts in the province, and this has been mainly caused by the doubtful and unsatisfactory state of the law. And if the Courts have been unable to say what law they were administering, it may easily be imagined how the people have fared, and how wide a door has thus been opened to needless and unjust litigation.

It is to be regretted that we cannot now apply to Oudh the law that prevails in the North-Western Provinces, with which it is probable that Oudh may some day be united. But this is, at the present time, obviously impracticable.

The present Bill, however, if it become law, will make the system followed in Oudh much more like that of the North-Western Provinces than it is at present. Many differences which now exist will be got rid of, and thus the future assimilation of the law in both provinces will be facilitated. No doubt this Bill looks at first sight very different from the law in force in the North-Western Provinces; but the differences of procedure are, for the most part, not very essential. There are, of course, some essential differences of substantive law, especially in respect to rights of occupancy; but these are differences which will be permanent, and which will always have to be recognized. And I may here properly notice that, considering the circumstances in which Oudh is placed, and the importance of not making its laws more divergent from those of the North-Western Provinces than is really necessary, it seems to me right to avoid widening present differences of system by legislation on matters that are not immediately essential. It will be obvious that there are many matters of importance with which a law of this kind might not improperly deal, to which this Bill makes no reference. This does not pretend to be a complete Code in respect of the recovery of rent. It professes only to provide for those matters regarding which legislation is really necessary at the present time.

Acting upon this principle, that uniformity of system with the neighbouring provinces is highly desirable, so far as this can be obtained without injury to any special local interests, I have embodied in this Bill very many of the provisions of Act X of 1859 and of Act XIV of 1863, which seem properly applicable to Oudh.

The most important differences between this Bill and the law in force in the North-Western Provinces and Bengal, are to be found in those provisions which refer to rights of occupancy. Section 4, and Sections 32 to 35 of the Bill, contain, with some modifications, the rules upon this subject, which, under the arrangements made last year with the Taluqdárs, it was proposed to apply to Oudh. It is necessary to explain that these Sections differ in some respects from what was originally approved by the Government and by the Taluqdárs.

Under the arrangement made last year, an ex-proprietor could only obtain a right of occupancy if he had been in possession of his holding continuously for twenty years, or since he ceased to be proprietor. After this rule had been agreed upon, it became clear that the necessity of proving in every case this long period of continuous possession, would often have involved a troublesome and tedious inquiry, and this would practically have been as disadvantageous to the landlord as to the tenant. The Taluqdárs consequently have agreed to omit

altogether from the rule the condition of continuous occupancy. As the rule now stands in Section 4 of this Bill, every person who, within the thirty years before annexation, possessed the proprietary right in the village, but has, through any cause, fallen to the position of a cultivator, will have a right of occupancy in the land now in his possession. The condition that the land has not come into his occupancy for the first time since the 13th February 1856, is intended to prevent an ex-proprietor from obtaining a right of occupancy in land which has only lately been acquired by him, and this is nothing more than is reasonable. The Section, as it now stands, is more favourable to the ex-proprietor than the original rule, and I think that the Taluqdárs deserve much credit for the liberality which they have shown in agreeing to the change.

Some alterations have also been made, with the consent of the Taluqdárs, in the rules which define the conditions under which the rent of a tenant having a right of occupancy may be enhanced. These rules are to be found in the first Sections of Chapter IV of the Bill.

The original rules were taken, with slight alteration, from the proposals made by Sir William Muir for the amendment of Act X of 1859. In addition to the grounds of enhancement now stated in this Bill, the rent of the ex-proprietor might be increased if it "had remained without enhancement from "a period since which the money value of agricultural produce in the vicinity "had risen, or had been enhanced in a proportion less than the rise of such "money value, or otherwise than in consequence of such rise."

The rule under which, in this case, enhancement of rent might be made, followed a well known decision of the Calcutta High Court. It would have been by no means easy to apply the rule in practice, and the Taluqdárs, in whose interest it was originally inserted, themselves prefer that it be omitted. The conditions under which, according to the present proposals, the rent of a tenant having a right of occupancy can be enhanced, will be simple. If the rent paid by him is below the prevailing rate paid by other tenants of the same class for land of a similar description, the rent may be raised to the full rate so prevailing. In other cases, the rent payable by tenants-at-will will be the standard by which the rent of tenants with a right of occupancy will be regulated. If the rent paid by a tenant with a right of occupancy is more than 12½ per cent., or two annas in the rupee, below the rent paid by tenants-at-will for similar land, the rent may be raised to the amount paid by such tenants-at-will, minus 12½ per cent.

The only other case in which the rent can be enhanced, is when the area of the land has increased. This case demands no special notice. Some other

alterations have been made in the original rules, and these, as I have noticed in the Statement of Objects and Reasons attached to the Bill, have not all been communicated to the Taluqdárs. This will be done through the Chief Commissioner of Oudh before further progress is made with the Bill, and I need not refer to them now.

Except the rights of occupancy of which I have now been speaking, no rights of occupancy are recognized by this Bill. It will be seen that no rights can grow up in Oudh, like the rights which grow up in Bengal and in the North-Western Provinces, from the mere occupation of the land for twelve years or for any other period.

I have noticed in the Statement of Objects and Reasons attached to this Bill that one of the reasons which renders legislation desirable, is the doubt that exists regarding rights of occupancy in estates not belonging to Taluqdárs. On this subject I cannot do better than make the following quotation from a valuable note by Sir William Muir on the revenue-law now in force in Oudh :—

"The Courts," he writes, "would, no doubt, afford to the class of ex-proprietors protection in all taluqdárí villages on the strength of the late compromise. It would be held that by agreement they had obtained a right of occupancy, and of having their rents fixed under certain principles. But there is no similar compromise or agreement on the part of those landlords who are not Taluqdárs; yet it is evidently the intention of Government that the system should be the same here also; for the Chief Commissioner was informed that precisely the same 'rules would be applied to all *non-taluqa* villages in which the former proprietors have succumbed before others.' Now in the non-taluqa villages the Revenue Court would proceed upon one of two suppositions. It would either entertain the claim on the ground that, under the convictions of the presiding officer, the ex-proprietary ryot had, by the custom of the country, or by the law introduced in 1856, the right of occupancy—a principle which might go greatly beyond the compromise of the Taluqdárs, and confer protection on other classes not contemplated by them;—or, if the presiding officer held that there was no right then, as the landlords in non-taluqa villages were not parties to the compromise, the Court would probably refuse protection. The only remedy for this state of things is either a new legislative provision, or the endeavour to persuade all the Zamíndárs in the portion of Oudh (one-third) not belonging to taluqas to enter into the same agreement as the Taluqdárs have done. Evidently, the former measure would be the simplest and most effective."

It seems unnecessary for me to add anything to these remarks of Sir William Muir.

The Bill lays down broadly, in Section 40, a very important principle. It is there stated that—

"It shall in no case be competent to the Court to inquire into the propriety of the rate of rent payable by a tenant not having a right of occupancy. The rent payable by such tenant

shall be such amount as may be agreed upon between him and the landlord; or if no such agreement has been made, such amount as was payable in the previous year; or if notice of enhancement of rent has been served upon such tenant in the manner provided by Section 37, the amount stated in such notice, unless such tenant has successfully contested his liability to pay such enhanced rent in the manner provided by Section 38."

This principle differs to an important degree from the principle laid down in Act X of 1859, at least as that principle has been interpreted by the Calcutta High Court. According to the view taken by the High Court, a landlord may eject a tenant-at-will if he cannot come to an agreement as to the rate of rent to be paid. But if the landlord, after giving notice to the tenant that the rent will be enhanced, does not oust the tenant, the tenant, if he choose to do so, may wait on until the landlord sues for the enhanced rent, or proceeds to levy the amount by distraint, and the tenant may then raise the objection in Court that the rent demanded by the landlord is excessive. The Court will then determine what is a fair and equitable rent, and the amount thus determined is what the tenant will have to pay.

I do not think that the legislature could introduce a similar rule into Oudh without exposing the Government to the charge of attempting to establish rights of occupancy under another form. Nor do I believe that it is desirable, in the interest of the tenants, that we should give power to the Courts to determine, under such circumstances as those that have been described, the rates of rents which tenants-at-will ought to pay. This sort of protection seems to me to be no protection at all, and I believe that it does more harm than good to the tenants themselves. This belief is in no way inconsistent with an apprehension which I confess that I feel, that it may be found hereafter that the practical recognition of the principle in respect of the majority at least of the cultivators of Oudh, that rents are to be fixed by competition and not by custom, may lead to unfortunate consequences. In this matter I accept, for my part, although it has become the fashion in India to doubt it, the doctrine that rents paid by labourers in a low state of civilization cannot safely be left to the mere discretion of the landlord. I believe, as Mr. Davies has said in his report on tenant-right in Oudh, that—

"The doctrine that rents paid by labourers raising their wages from the soil cannot safely be exposed to competition, as expounded by Mr. J. S. Mill, is now generally accepted by political economists. It is seen that a rapidly increasing population is soon straitened for food; that they will contend fiercely amongst themselves for the payment of the rent of land from which alone, in a purely agricultural country, they can extract it; that such contention, whilst nominally and transiently raising rents, must lead to impoverishment and reduced wages; that, with increasing poverty, the secondary wants necessarily diminish, self-respect vanishes, whilst

the multiplication of numbers is accelerated; that the end is to the landlord a shrunken rent-roll and deteriorated property; to the country a degraded and desperate peasantry. It is admitted, on the other hand, that rents paid by capital may safely be left to competition, that sensitive fund giving timely and early warning of over-exaction to the investor. Contending not for bread, but for the fair interest of his money, he, unlike the starving cultivator, can and will separate from the soil. Whence is suggested an answer to the question often asked,—'why allow competition for grain and not for the rent of land paid by peasants?' Because competition for grain has no tendency to multiply the number of mouths to be fed; but, by adjusting its price in proportion to the supply, rather puts people on their thrift; whereas competition for rack-rent leases, by encouraging false confidence, by eventually lowering wages, and by minimizing the prudential checks, has a direct tendency to stimulate the increase of population, and, in course of time, to lessen the fund for its support."

I think, Sir, that after all the discussions that have taken place with regard to this subject, no useful purpose is to be gained by my entering into it again. Circumstances beyond control have brought about this state of things in Oudh, and I can only express the hope that my apprehensions may prove unfounded. And, after all, much has been accomplished for the protection of tenants in Oudh, although it may not be all that was theoretically desirable. But (I quote again from Mr. Davies' Report)—

"If at any future time the condition of the cultivating classes should become such as to demand legislative interference; if it should be found that, from the operation of causes familiar to modern science, the country is reduced to a worse state than that from which the British annexation was intended to rescue it, I conceive that the duty of dealing with such an emergency cannot be evaded by the Government. If, at some future time, further interference should become necessary, such changes of proprietorship and feeling will probably have taken place as will pave the way for legislative action."

To this I only desire to add that, if the results thus contemplated as possible by Mr. Davies should unfortunately occur, the sanads of the Taluqdárs themselves, and the orders under which those sanads were granted, give to the Government full authority to interfere. For the rights that were bestowed upon the Taluqdárs were "conceded subject to any "measure which the Government may think proper to take for protecting the "inferior zamíndárs and village occupants from extortion;" and every Taluqdár has been bound by a special condition inserted in his sanad, "that he will, so far "as is in his power, promote the agricultural prosperity of his estate;" and it has been declared that the breach of this condition shall annul the right that has been conferred upon him. I hope that it may not be necessary hereafter to remind the Taluqdárs of these obligations.

It may be proper that I should add that, except in respect of the special conditions under which rights of occupancy are to be enjoyed, the legislature

is, in my opinion, no more fettered in Oudh in dealing with questions between landlord and tenant, than in any other province of India. With the exception that I have now noticed, there is, I consider, no subject referred to in this Bill which is in any way mixed up with the political engagements entered into by the Government with the Taluqdárs. It is desirable that there should be no misunderstanding on this point.

It was estimated by Sir Charles Wingfield that, under an arrangement very similar to that which has now been made, some 20 per cent. of the whole body of cultivators in Oudh would obtain a right of occupancy.

An important protection to all tenants will, I hope, be further given by the provisions contained in Sections 22 to 27, regarding compensation for unexhausted improvements. All tenants have, I think, a right to claim that, if the landlord determines to oust them or to enhance their rent, they shall be entitled to compensation for the value of improvements of the land which have been made at their own expense. The justice of this principle is now so generally admitted that I think it needless to say much regarding it. Although it has long been more or less recognized in other Indian provinces, it has, I believe, been nowhere so distinctly laid down as it will be in Oudh, if Sections 22 to 27 of this Bill become law. These Sections, somewhat differently expressed, formed a part of the arrangements entered into last year. The only change of importance that has been made in the rules as they originally stood, is that compensation for improvements may be claimed, not only when the landlord desires to oust the tenant, but also when he demands a higher rent. It is to the credit of the Taluqdárs that they have readily agreed to this alteration. The matter was, however, in reality, one which need hardly have been mixed up last year with the question of rights of occupancy, and there was, perhaps, no necessity for specially consulting the Taluqdárs regarding it.

The fourth and fifth Chapters of the Bill refer to the enhancement of rent and to the ejectment of tenants from their holdings. The provisions of these Chapters, although of very great importance, do not seem to require any special explanation at this stage of the discussion. They are, for the most part, very similar, so far as tenants-at-will are concerned, to those contained in Act X of 1859. Of the conditions under which the rents of tenants with rights of occupancy can be raised, I have spoken already.

The next Chapter of the Bill refers to distraint for arrears of rent. The Bill admits the principle which is everywhere acknowledged in India, that the produce of the land is held to be hypothecated for the rent payable by the tenant,

and it gives to the landlord the power, when an arrear of rent is due from any tenant, to make distraint of the standing crops, or other ungathered products of the land on account of which the arrear is due. Under the law which prevails in the North-Western Provinces and in Bengal, if, when the distress is made, the tenant does not pay the amount due or institute a suit to contest the demand, the landlord may, by his own authority, cause the distrained property to be brought to sale by the Amín of the Civil Court, or other officer entrusted with the duty of conducting sales in execution of decrees. This power of bringing the property of tenants to sale, is exercised in such a way that the Collector has little power of checking the abuses which, under such a system, are almost certain to arise. Where, however, landlords have long exercised this power, it may be doubtful whether it is expedient to deprive them of it. In Oudh, although the law which is considered to be in force regarding distraint, Regulation XXVIII of 1803, gives the power of bringing to sale the property of a defaulting tenant, the exercise of this power has been greatly discouraged by the orders of the Chief Commissioner, and, in the greater part of Oudh, it has been little exercised. Consequently, in taking away from the landlord the power of bringing the tenant's property to sale on his own authority, there will be little practical change in the system actually followed. While the Bill proposes to maintain the power of the landlord to distrain the crops of the tenant, it does not give to him the power of sale. After the distress has been made, the landlord must, within ten days, institute a suit for the recovery of the arrears due to him, and at the time of bringing the suit, he may apply to the Court to order security to be taken from the defendant for payment of any decree that may be passed against him, or, in default, for the attachment of the property already distrained. I need not enter into further details, but I hope that these provisions of the Bill, while they guard against abuses, will not in any way interfere with the security for the speedy recovery of his rents which must always be preserved to the landlord.

The remaining Chapters of the Bill refer to the jurisdiction of the Courts and to the procedure to be followed by them.

It must be remembered that, in one important respect, the system followed in Oudh in the administration of the Judicial and Revenue Departments, differs from that followed in the neighbouring provinces. The same officers preside in Oudh over the Civil and Revenue Courts, whereas, in the North-Western Provinces and in Bengal, the Court of the Collector is entirely separate from the Courts of the Judges who dispose of ordinary civil suits. Even where this separation exists, there seems to me to be no gain and very much

loss in having a different procedure for the two classes of Courts. Three-fourths of the suits that are heard in the Collectors' Courts under Act X of 1859 are, in fact, civil suits of the simplest character, and the procedure followed in similar cases in the Civil Courts would be entirely applicable to them. No simpler and more appropriate rules could, I believe, be adopted than those contained in the Code of Civil Procedure. The procedure of Act X of 1859 is very similar to that of the Code, but where it differs, the provisions of the Code are almost always clearer and better, and more likely to prevent delay in disposing of cases. And, whatever may be said in other provinces where a different system prevails, in favour of retaining these differences of procedure, certainly nothing can be said in favour of such a course in Oudh, where the same officers preside over both Civil and Revenue Courts. It is proposed, therefore, to apply to the suits that will be heard under this Bill the rules contained in the Code of Civil Procedure. A few additions and modifications are necessary, because the Code was drawn up on the assumption that the particular classes of cases with which this Bill deals would not come into the Civil Courts at all; and, consequently, the provisions for disposing of them are not always sufficient.

I do not think that I need explain the provisions of the Bill further. I dare say there may be many points in detail in which it may be improved, and the more thoroughly it is examined and discussed, the better. But I hope that it may be said of the Bill generally that if it become law, it will carry out the objects with which it has been introduced.

Before, Sir, I conclude what I have to say regarding this Bill, I wish to acknowledge the large share that Mr. Davies, the Financial Commissioner of Oudh, has taken in its preparation. And having mentioned Mr. Davies' name, I hope that your Excellency will allow me to take this opportunity of expressing my sense of the great obligations which the Government and the province of Oudh owe to Mr. Davies for the part that he has taken in the late controversies, and in the arrangements by which we may hope that those controversies are now being terminated. From the time when the duty of making the inquiry into rights of occupancy in Oudh was entrusted to Mr. Davies, he has had a very difficult task to perform, and he has performed it in a manner which has deserved, and has obtained, the warmest approval of the Government, and has gained the confidence of all classes in Oudh.

Sir, there are only a few more words that I wish to say. I have avoided, as far as possible, re-opening discussions that have, I hope, been closed, but there is one matter to which I think that I may properly refer.

When I last year submitted to the Government the report which led to the settlement of these questions, I expressed a belief that, judged by the results, the measures that had been taken by your Excellency's Government must be pronounced successful. This Bill shows, in respect of the important questions affecting landlords and tenants that had long been pending in Oudh, what those results actually are. It appears to me that, however incomplete these arrangements may be, they have certainly had the effect of very much improving the position of the humbler classes in Oudh. In the first place, privileges which custom had long given to a large and important body of cultivators, have been secured to them as rights. I believe that everybody admits that this class possessed special claims to consideration. Neither the Taluqdárs, nor Sir Charles Wingfield, nor, so far as I know, any one else, have ever said that it is not just that these advantages should be granted to this class of tenants. It would be a great mistake to suppose that, in the matter of protection to tenants, the results that have been obtained are insignificant. The number of tenants who will have a right of occupancy under these rules was estimated, as I have already noticed, by Sir Charles Wingfield, at one-fifth part of the whole number of the cultivators of Oudh. I can understand that it should be maintained by some, although, in fact, I believe no one has maintained anything of the kind, that this result is a bad one, but it certainly is not an unimportant one. It may be said that these advantages are due, not to the action taken by the Government, but to the liberal concessions of the Taluqdárs. But the truth is that, in this as in other matters, it has seemed far wiser to correct the errors of the past by coming to an amicable arrangement with the Taluqdárs, than by carrying out the necessary measures under the authority of the Government. I do not wish to detract from the credit due to the Taluqdárs. I think that they have shown in these transactions a liberality and a sagacity which are very honourable to them. Whether, if the Taluqdárs had refused their consent, the legislature would nevertheless have carried out provisions in favour of tenants, similar to those contained in the present Bill, I cannot say. But I am sure of this, that it would have been right for the legislature to do so. However this may be, the arrangements that have been made have, in truth, been as much the result of the measures taken by the Government as if they had been carried out by legislation without reference to the Taluqdárs; and the fact appears to me altogether indisputable that, without the interference of the Government, no such arrangements would have been carried out, or even seriously thought of. And it must not be forgotten that these privileges which have been given to a large class of cultivators, are by no means the only advantage that has been gained. The provisions under which every tenant who has made improve-

ments will be able to claim compensation for their value, if his landlord desires to eject him from his holding or to enhance his rent, will have undoubtedly very important consequences, and I believe that they will be as beneficial to the landlords as to the tenants. When I remember the agitation upon this very subject that has so long been going on in Ireland, and which still continues; the importance which English Statesmen and economists have long attached to this question, the proper solution of which has been supposed by many to be the panacea for all the misfortunes and for all the wrongs of Ireland, and the attempts made by different English Governments to settle it; I may safely affirm that if there had been no other result of these Oudh controversies than this, English Statesmen at least would not think the result an insignificant one. Sir, I will not pursue this subject further. I will merely repeat my conviction that the interference of your Excellency's Government in Oudh, in respect of the matters of which I have been speaking, was necessary and wise, and that it has been successful in bringing about results which will be highly beneficial to the most important interests of the province.

The Hon'ble MAJOR-GENERAL SIR H. M. DURAND understood that this Bill was based on the consent of the Taluqdárs, under which circumstances it was not likely to meet with any opposition. At the same time he found that a reference to the Taluqdárs was to be made as to the Sections relating to rights of occupancy and other privileges to be enjoyed by certain classes of tenants. He confessed he would have preferred to know distinctly what the views of the Taluqdárs really were before the Bill was introduced, although he was quite willing to take the Hon'ble Mr. Strachey's word for it that the more important of the variations had already been assented to. The Bill embodied many points of first principle, and a cursory reading had enabled him to point out some subjects which seemed to require change or at least consideration. Take, for instance, the first case in Section 32 as to the enhancement of the rent of a tenant with a right of occupancy. If the rate of rent paid by such tenant was below the prevailing rate of rent payable by the same class of tenants having a right of occupancy, for land of a similar description and with similar advantages, *situate in the same village*, the Court was to enhance the rent of such tenant to the rate so prevailing; but it might well happen that the great body of the ryots in that village had no right of occupancy, or that the majority had rights of occupancy, and paid the same, but less than the same class in adjoining villages of the same district, up to the rates of which the landholder wished to raise them. By what rule then would the Court be guided? He trusted that the Hon'ble Sir George Yule, whose experience in revenue matters was so great, and knowledge of Oudh so intimate,

would consent to serve on the Select Committee to which the Bill would be referred.

The Hon'ble MR. MAINE observed that it was very important that the Taluqdárs' consent should be obtained to everything in the Bill of which they had not already expressly approved, otherwise the Bill could not come within either class of those measures which—with the concurrence, as he believed, of the Council—he had recently described as being proper to pass at Simla. For it certainly was not a trifling measure of routine, and in the absence of the Taluqdárs' approval, it could not be said that this was a measure on which every one entitled to speak with authority had spoken.

The Hon'ble MR. STRACHEY explained that he had been obliged to leave Lucknow before this matter could be finally settled with the Taluqdárs. He fully admitted that it would have been more satisfactory if he had been able to state that all the changes of which he had spoken had been already approved by the Taluqdárs. He felt sure, however, that no difficulties on this score would arise.

The Motion was put and agreed to.

The following Select Committees were named —

On the Bill to repeal Act No. XIX of 1866 in the places to which the Madras Salt Excise Act, 1867, may be made applicable—The Hon'ble Mr. Taylor, and the Mover.

On the Bill to consolidate and amend the law relating to the recovery of rent in Oudh—The Hon'ble Messrs. Maine and Taylor, the Hon'ble Major-General Sir H. M. Durand, the Hon'ble Sir George Yule and the Mover.

The Council adjourned till the 24th July 1867.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 17th July 1867.

Office Supdt. Govt. Printing.—No. 3465 L. C.—23-8-67.—200.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Simla on Wednesday the 24th July 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble H. Sumner Maine.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble Sir George Yule, C. B., K. C. S. I.
The Hon'ble John Strachey.

MADRAS SALT BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill to repeal Act No. XIX of 1866 in the places to which the Madras Salt Excise Act, 1867, may be made applicable.

FINANCIAL AND JUDICIAL COMMISSIONERS' (OUDH) BILL.

The Hon'ble MR. STRACHEY, in moving for leave to introduce a Bill to enable appeals to be transferred from the Court of the Financial Commissioner of Oudh to the Court of the Judicial Commissioner of that Province and for other purposes, said that the object of the measure might be stated in a few words. The Court of the Financial Commissioner in Oudh was the final Court of appeal in suits involving rights to land. In consequence of the progress of the settlement of land-revenue, this Court was sometimes overwhelmed with appellate business, which might be transferred to the Court of the Judicial Commissioner, who was well fitted to dispose of such appeals, and whose proper work was comparatively light. He (MR. STRACHEY) proposed also to take this opportunity of giving to the Financial and Judicial Commissioners power to sit together for the hearing of cases of special difficulty and importance, whether in the revenue, civil or criminal departments. In case of difference of opinion, the Bill provided the same sort of procedure as was established by the Panjáb Chief Court Act (No. IV of 1866) in case of difference between

the Judges of that Court. Under the Bill, he ... would be to the High Court of the North-Western Provinc... Act, to the High Court at Calcutta ... proposed measure ... agreeable to the Financial and J... missioners themselves, ... tend to give the public in Ou... nfidence in the administration of justice.

The Motion was p... o.

The Council a... e 31st July 1867.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIM...
The 24th ...

Office Superd. Govt. Printing.—No. 3884 L. C.—6-8-67.—250.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 31st July 1867.

PRESENT:

His Excellency the Viceroy and Governor General of
His Excellency the Commander-in-Chief, G. C. S. I., K.
The Hon'ble H. Sumner Maine.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S.
The Hon'ble John Strachey.

MADRAS SALT BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to repeal Act No. XIX of 1866 in the places to which the Madras Salt Excise Act, 1867, may be made applicable, be taken into consideration. He said that the Committee had merely made one verbal alteration, and that on a previous occasion he had explained that the Bill was only intended to remove a formal obstacle in the way of certain legislation proposed in the Council of Madras.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then moved that the Bill be passed.

The Motion was put and agreed to.

OUDH TALUQDÁRS' BILL.

The Hon'ble MR. STRACHEY introduced the Bill to define the rights of Taluqdárs and others in certain estates in Oudh, and to regulate succession thereto, and moved that it be referred to a Select Committee, with instructions to report in six weeks. He said :—

"When, Sir, I asked for leave to introduce this Bill, I gave a sketch of the principal features of the policy which has been followed by the Government in

Oudh during the last few years. I shall now say very little regarding that policy, and I shall, I hope, be able to confine my remarks to an explanation of the provisions of the Bill.

As I before stated, the main object of this Bill is simple. It is to confirm by law the arrangements affecting the rights of Taluqdárs and others in Oudh, which were made under the orders of Lord Canning's Government.

One of Lord Canning's last acts, before he left India in March 1862, was to introduce a Bill to provide for the very same objects which are now contemplated. Although it has seemed necessary to remodel the Bill of 1862 to a great extent, the Council will find, if a comparison between the two Bills be made, that there is much resemblance between them. The differences are rather in matters of secondary importance than in principles of an essential character. I shall notice the more important of them in explaining the provisions of this Bill. After Lord Canning's departure, the further consideration of the Bill which he had introduced was postponed, and it has not since been proceeded with.

It is essential that there should be no misunderstanding regarding the nature of the rights which the Taluqdárs are held legally to possess under the sanads which they have received from the British Government. Every Taluqdár possesses, according to the opinion of the highest authorities, a strictly personal and exclusive right of property in his estate, with this exception only, that the rights of subordinate holders have been, under certain conditions, reserved. The Taluqdár, instead of holding an ancestral estate, as he formerly did, under the restrictions of the Hindú or Muhammadan or local law, now possesses an absolute power of disposing of his estate, as he pleases, by sale, or gift, or by will.

It will be observed that this absolute power, of which I have spoken, is not referred to in any very express terms in the form of sanad originally prescribed by Lord Canning, and which is republished in the first schedule to this Bill. But orders were subsequently issued which place beyond a doubt the interpretation which must be put upon the sanads. Those orders were issued when, as I explained when I moved for leave to introduce this Bill, conditions regarding succession according to the rule of primogeniture were added to the original sanads.

It will throw light upon all the questions to which this Bill refers, if I give some account of the correspondence which took place between the Government and the Chief Commissioner on this subject in 1860.

When Sir Charles Wingfield proposed to apply the rule of primogeniture, he recommended that it should be a condition of the grants which had been made by the British Government, that estates should not be liable to sub-division. But he, at the same time, objected to give to the Taluqdárs the power of disposing of their estates as they pleased, in violation of the principles of Hindú and Muhammadan law. He stated that,—

'It had been laid down by a leading decision of the Sadr Adálat, North-Western Provinces, that ancestral landed estates cannot be alienated without the consent of the heirs, and the principle has been repeatedly affirmed in the highest Courts of the North-Western Provinces and of Bengal, and by the decision of the Privy Council, that in families where a *gaddí* or the law of primogeniture prevails, there can be no partition of the estate. There can surely be no reason for giving the Oudh Taluqdárs a power over their estates, which is not possessed by landholders in any other part of India, which they have never yet enjoyed, and do not ask for now, and which is opposed to the tenets of their religion, and the most authoritative decisions of our tribunals. If it is desirable, as seems fully admitted, to maintain the great landed families that now flourish in Oudh, why devise new rules calculated to hasten their decay? The Chief Commissioner would observe that he is not contending against imaginary dangers. He has had opportunities of forming a judgment on the effects of the proposed measure; he has also instanced a remarkable case in point, and he could advert to others likely to occur. If the Chief Commissioner had not influence enough to prevent him, he is inclined to think that the ——————————would leave his vast estate to his illegitimate son by a Muhammadan woman, though he has nephews and other blood-relations. The desire, so common to all, of preserving the name and family estate to future generations, is no proof against the various influences and temptations to which their possessions for the time being are sure to be exposed. The Chief Commissioner can, therefore, place no reliance on the strength of this feeling to prevent the breaking up of our great taluqas.'

In another letter, Sir Charles Wingfield wrote as follows:—

When the Taluqdárs come to know that the Government considers them 'free to dispose of their estates as they please by sale, gift, or bequest,' many will be tempted to make dispositions of their property opposed to Hindú law, public feeling, and all sense of justice or morality, and in their consequences ruinous to a Native aristocracy. Taluqdárs, in their dotage, yielding to the influence of young wives, concubines, and corrupt dependents, would often disinherit their legal heirs in favour of younger sons, and even of illegitimate offspring. A case in point occurred only the other day in the family of the Rájá of ——————, the head of the ——————clan, and one of the highest Hindú families in Oudh. He had acknowledged as his son the offspring of a courtesan who had given birth to the boy before she had become acquainted with the Rájá. All the Rájpút Taluqdárs of the east of Oudh were incensed at the proceeding, and claimed the Chief Commissioner's interference. The Chief Commissioner told the Rájá that the Government would never recognize this pseudo-son as heir to the estate, but would vindicate the rights of his brother to the succession. He persisted in declaring the boy his heir, but never ventured to make any gift or bequest in his favour,

believing himself without the power to do so. Had he, however, been informed of the substance of paragraph 9 of your letter, he would undoubtedly have transferred his estates to this boy, and every Taluqdár in Oudh would have felt aggrieved, and that a dishonour had been done to his race, which he would have blamed the Government for having permitted. It is quite certain that such full and unrestricted right to dispose of ancestral landed estate, as is conceded in paragraph 9 of your letter, has never been recognized by our Courts of law. Regulation XI of 1793, Section 6, which first gave landholders in Bengal power to dispose of their estates by will or gift, attaches the following condition, which, in fact, reduces the power to nothing :—'Provided the bequest or transfer be not contrary to Hindú or Muhammadan law.' It is, therefore, laying down a totally new doctrine to assert that a Taluqdár is free to dispose of his landed estate in any way he pleases; and although it is part of the Chief Commissioner's argument, as will afterwards appear, to admit that the Government is at liberty to make this or any other rule in Oudh, this novelty has nothing to recommend it, being opposed to the feelings of the people and to the policy of the Government.'

The Governor General, Lord Canning, did not concur in the views thus urged by the Chief Commissioner. In orders dated the 10th March 1860, it was stated as follows :—

'The condition which you propose to insert in the sanads which remain to be conferred, is much too stringent. It would limit the power of the Taluqdár over his estate to a degree which is not consistent with the promise of the Governor General that his right should be hereditary and transferable. It would also have the evil effect of a law of entail in leading to the retention of large estates by an impoverished proprietor, in the not unfrequent case of long-continued extravagance. The Governor General has no doubt that each Taluqdár ought to be left free to dispose of his estates in whole or in part as he pleases, and either by sale, gift, or bequest. But when a Taluqdár dies intestate, His Excellency agrees with you in thinking it desirable that the estate should devolve on the nearest male heir, according to the rule of primogeniture applicable at present to estates having a *gaddí*.'

On the 17th July 1860, further orders were given by the Governor General in Council as follows :—

'The Governor General in Council will not consent to limit the absolute power over his estate which has been guaranteed to every Taluqdár in Oudh, and is convinced that the existence of such a power is just as essential to the prosperity of the province, and to the maintenance of a landed aristocracy on a sound footing, as the extension of the rule of primogeniture in cases of intestacy. As, on the one hand, it will be in the power of every Taluqdár to refrain from making a will, and so to allow his estate to devolve undivided on his nearest heir, or, if childless, to adopt a son who will inherit the whole of his estate, or to bequeath it by will to any one person whom he may wish to designate as his successor; so, on the other hand, it is right that he should be at liberty to bequeath his estate to more than one person, in accordance with Hindú or Muhammadan law, or otherwise, as may suit his pleasure. Though the present holder of a taluq may be in favour of the rule of primogeniture, his

successor may be of a different opinion, and His Excellency in Council would not deprive Taluqdárs, in all future generations, of the power of bequeathing their estates in accordance with their own views. To deny them this power would be in effect to establish a strict entail,' so far as bequests are concerned, and would operate at least as injuriously in one direction as the existing rule of partition in another. * * * I am therefore directed to request that the Officiating Chief Commissioner will call upon every Taluqdár in Oudh, in whose family the rule of primogeniture has not heretofore prevailed, but to whom the Chief Commissioner desires to extend it, to declare in formal terms whether he is desirous that this rule should be applicable to his estate or not. To all who desire it, the Chief Commissioner is authorized to issue new sanads, declaring, in addition to the conditions already sanctioned by the Governor General, that the estate, in case of intestacy, shall descend to the nearest male heir; and adding, by way of proviso, that the Taluqdár has full power to alienate his estate, either in whole or in part, by sale, mortgage, gift, bequest, or adoption, to whomsoever he pleases. In respect to the Taluqdárs in whose families the rule of primogeniture now prevails, the Governor General in Council is of opinion that there is no necessity for calling upon them to make any such formal declaration, because their estates will pass, in case of intestacy, as heretofore; and the terms of their present sanads are sufficiently wide to confer on them the absolute power over their estates that the Governor General in Council desires they should have; but any Taluqdár of this class may be permitted to give up his sanad, and to receive in lieu thereof another in which the rule of primogeniture shall be expressly recognized as applicable to his estate and family, and in which it shall be declared that the title conferred on him by the Governor General includes a full right to dispose of his estate as he pleases during his life-time, and by bequest or adoption at his death.'

I have already quoted the reasons for which Sir Charles Wingfield objected to these orders. The Governor General refused to admit the force of those objections, and, on the 18th September 1860, the former orders were thus reiterated:—

'These arguments have failed to convince the Governor General in Council that it is either necessary or expedient to depart from the principles already laid down, or to limit the powers of the Taluqdárs over their estates, even to the extent you now propose. The estates of these Taluqdárs are not ancestral in the sense in which the word seems to be used by you. The majority of them are, no doubt, held by descendants or representatives of former possessors; but it is not this that constitutes the right and title by which the present possessors hold them. That right and that title consist in the estates having been bestowed upon the present possessors as a free gift from the State, and the estates are enjoyed under the conditions expressed in the sanads by which they were conferred. The Governor General considers it inexpedient to include, among the conditions of gift, the restrictions to which ancestral estates are subject, and by which the value of the gift would be materially diminished. The Governor General in Council doubts whether Hindús and Muhammadans in Oudh have not the power to dispose of their personal property by will; but supposing that they do not possess this power, it is of no great consequence that their landed estates should follow one rule of inheritance, and their personalty another. * * * I am therefore desired

to request that the instructions conveyed in the Secretary's letter of the 17th July may be acted upon.'

These orders were then carried into effect. The majority of the Taluqdárs, nearly 200, I believe, out of about 250, stated their willingness to take sanads in the new form, and the following words were added to the form of sanad originally ordered by the Government to be adopted :—

'It is another condition of this grant that, in the event of your dying intestate, or of any of your successors dying intestate, the estate shall descend to the nearest male heir, according to the rule of primogeniture ; but you and all your successors shall have full power to alienate the estate either in whole or in part, by sale, mortgage, gift, bequest, or adoption, to whomsoever you please.'

I believe that there can be no doubt that these orders of the Governor General have as much validity as the orders under which the sanads were originally given, and that they have equally received from the Indian Councils' Act the force of law.

I have said, Sir, that I shall not now discuss the wisdom of the policy that has been followed in Oudh. On that subject I said enough on a former occasion. But there is one matter in which I wish to guard against possible misunderstanding. The Council may remember that I expressed an opinion that the injustice which has, in some instances, resulted from the measures that have been taken in Oudh, would not have been admitted by Lord Canning to be a legitimate consequence of his policy, and that he would have insisted upon such injustice being remedied. Now this opinion may seem to be hardly consistent with the orders which I have just been quoting. For those orders show that the Governor General deliberately insisted upon giving to the Taluqdárs an unlimited power of disposing of their estates, and those orders really confirm the sweeping away of preexisting rights in a more unmistakable manner than the original sanads themselves. But the truth is, I believe, that the Government of Lord Canning never became aware of one of the chief effects to which the sanads, thus interpreted, would lead. The Chief Commissioner objected to giving these unlimited powers to the Taluqdárs, because he thought that the result would be that estates would be broken up, and that the object of preserving a great landed aristocracy would be frustrated. Lord Canning disagreed with the Chief Commissioner on the grounds that I have quoted. But not a word was said regarding what seems to me to have been one of the most important questions that were really at issue. That question was, whether numerous rights of third parties were to be confis-

cated. I can nowhere find the least sign that Lord Canning contemplated any such results as those which I described when I obtained leave to introduce this Bill. And I think that the correctness of this view is placed beyond doubt by statements of Lord Canning's intentions which are upon record. For instance, on the 12th September 1860, while the discussion regarding the question of primogeniture and the rights of Taluqdárs was going on, and after that question had virtually been disposed of by Lord Canning, the following instructions were sent to the Chief Commissioner:—

'The Governor General in Council desires me to observe that, in declaring that in confiscated estates which have been conferred in taluqdárí tenure on a new grantee, the strict terms of the proclamation of March 1858 are to be enforced against all holders of subordinate rights in such estates, and that the whole agricultural community, whatever their previous status, are to be reduced to the condition of tenants-at-will under the new taluqdárí grantee, the Officiating Chief Commissioner has gone considerably beyond the intentions of His Excellency, and has not acted in accordance with the spirit of Her Majesty's proclamation. In the Governor General's orders of the 19th October last, defining the extent of taluqdárí rights as against inferior holders, no distinction was made between ancestral and acquired taluqas on the one hand, and conferred taluqas on the other, and no such distinction has ever been recognized by the Government. The policy of the Government has been to leave the confiscation of 1858 in force only in the cases of persons who persisted in rebellion, and generally, so far as to restore in its integrity the ancient taluqdárí tenure wherever it had existed at the time of the first occupation of Oudh in 1856, but had been set aside by our revenue officers. But the Governor General in Council never intended that in taluqdárí estates confiscated under the general order, and conferred, in consequence of the persistent rebellion of the Taluqdár, on a new grantee, all the holders of subordinate rights, though themselves not persisting in rebellion, and though pardoned by the Queen, should be merged in the consequences of the Taluqdár's guilt, and become partakers of his punishment. It was the intention of the Government that all such subordinate holders, unless specially deserving of punishment for persistent rebellion, should be restored to the rights they possessed before the rebellion, whether the parent estate were ancestral, acquired, or conferred; and that every such holder should be maintained in his rights under the new grantee, precisely as if the taluqa had not been confiscated or as if, having been confiscated, it had been settled with the hereditary Taluqdár. Generally, as regards the position of those who hold under the Taluqdárs, the intention of the proclamation of 1858, and of every act of Government that has followed it, was a return to the condition of things which existed before the annexation of Oudh, and which had been altered (for the better as was then believed) by the action of our officers in 1856, under the instructions issued on annexation. This is stated broadly and generally in paragraphs 29, 30 and 31 of the Governor General's published despatch of June 17th, 1858, to the Secret Committee, and is further explained in the instructions of October 19th, 1859. As regards the Taluqdárs, the intention of the proclamation of 1858, and of the declarations made and measures taken in October 1859 and subsequently, was, *first*, that in replacing them in possession of their old estates, or in conferring upon them new estates (as the case might be)

they should step into such possession, carrying with them the rights and authority which the Taluqdárs of those estates respectively held before annexation, and which the action of our officers in 1856 had impaired; and also carrying with them a new title derived from the Government, from whom alone, as their possession had been confiscated, any new title could be derived, *se ondly*, that the Taluqdárs should, by certain obligations imposed upon them, be restrained from the abuse of those rights and that authority.'

I hold it to be impossible that when Lord Canning issued the orders which I have now quoted, he could have supposed that property had been given to the Taluqdárs to which they had never made any claim nor any pretension; that the rights which former co-sharers with the Taluqdárs possessed had been swept away; and that the Government had transferred to the Taluqdárs all the rights in these estates which were formerly possessed by the members of their families. If, again, Lord Canning had been aware that such a revolution as this had taken place in the tenure of landed property, is it credible that when, just before he left India, he introduced the Bill to define the nature of the rights of the Taluqdárs, he should have made no reference whatever to the subject? Not only did he say nothing to show that he supposed that any great change in the position of the Taluqdárs had taken place, but he declared that 'the object in view was to combine the principle of primogeniture with 'other principles and usages traditional in this country and dear to the people. The truth, as it seems to me, is clearly this,—Lord Canning believed that the Taluqdárs with whom the summary settlement had been made, and to whom the sanads had been given, were, so far as superior rights were concerned, the sole proprietors of the estates settled with them. He had no knowledge of the fact that these Taluqdárs were, in many cases, not at all proprietors in the English sense of the term, but representatives of undivided families, the members of which had rights as indisputable as those of the Taluqdárs themselves.

But, Sir, as I said before, the orders of the Governor General under which the sanads were given, and the orders referring to succession by primogeniture, and to the absolute power of Taluqdárs over their estates, have received from the Indian Councils' Act the force of law; and being law, they must be interpreted like any other law by the light that they throw upon themselves. And, although I have declared that I do not believe that the law, as it now stands, is really in accordance with Lord Canning's intentions, I must admit that a different view may be taken by some high authorities; and this fact is alone sufficient to show that it would be unwise to propose to alter the law hastily. I have already explained why it seems to me unnecessary to consider the propriety of attempting now to correct by legislation the hardships of which I have spoken. Such a course would, I think, only be right if it became evi-

dent that no other means of redressing those hardships existed, and I have sufficient confidence in the liberality and good sense of the Taluqdárs to make me hope that nothing of the sort will be required.

Sections 4 and 10 of the Bill carry out the orders of Lord Canning to which I have been referring. Section 4 gives the force of law to everything contained in the orders under which the sanads were granted, and in the sanads themselves; and Section 10 removes all doubt as to the power which every Taluqdár possesses of transferring or bequeathing his estate in any manner he pleases.

Although, Sir, it seems to me necessary thus to confirm by law the engagements entered into with the Taluqdárs, I think that the considerations are very serious which were urged by Sir Charles Wingfield in support of his belief that the result of giving these unlimited powers to the Taluqdárs will probably be the breaking up of estates and the defeat of the objects which the Government had in view in establishing the Taluqdárs in a position of so much importance. There has always been a strong and influential party among the Taluqdárs themselves, who agree with the views which Sir Charles Wingfield expressed. Exactly the same view was taken by the Secretary of State. In a despatch dated the 17th August 1861, he wrote as follows:—

'I do not perceive why, on grounds either of justice or of policy, your Excellency's Government desire to give the Taluqdárs a more absolute control over their estates, than could have been the case if they had inherited them from their ancestors. In such cases the estates would have been subject to the prescribed conditions of such property, and could not have been disposed of in the unrestricted manner in which the proprietors are now declared by you to be competent to give or bequeath them to whomsoever they please. And when I consider the effects of *zanáná* influence, the frequency of family dissensions, and the general tendency to intrigue, among these people, it appears to me that this latitude of disposal, against which the Chief Commissioner has respectfully protested, may prove an obstacle to the accomplishment of the object which you most desire to realize, the preservation of property in the hands of the lineal representatives of the great families of Oudh.'

If, Sir, I could look upon this question as one which could properly be disposed of upon economical or, I ought rather to say, upon theoretical considerations alone, I should have no hesitation regarding the conclusion to be arrived at regarding it. Looking at such matters from a theoretical point of view, I entirely concur with those who believe that everything is an evil which places restrictions upon the transfer of land, and that the more completely land can be made to pass from one person to another without hindrance, like any other property, the better it is for the interests of the public. But I cannot admit that, under present circumstances, we ought much to concern our-

selves with such considerations. It is not necessary to go to Oudh for proof of the fact that, in the existing state of things in the greater part of India, this principle leads us to consequences which are politically mischievous and dangerous. I believe, to give an example of what I mean, that the restrictions which, in the Panjáb, in Oudh, and in some other provinces, have been placed upon the sale of land under decrees of the Civil Court, or for arrears of Government revenue, have been very necessary and very beneficial, and I believe it to be true that the adoption of an altogether different principle in the North-Western Provinces tended greatly to aggravate the difficulties of 1857. I do not profess any great admiration for the rule of primogeniture, nor do I think that the general application of this rule in Oudh is likely to lead to the preservation of the ancient families of the country. I believe that this object would have been more likely to have been gained if we had interfered less violently with the usages which had long prevailed, and I think that sudden changes, such as this, are more likely to destroy than to build up a landed aristocracy. But nevertheless I agree almost entirely with Sir Charles Wingfield's practical conclusions which I have already quoted. I think it very unwise that we should encourage dispositions of property unknown to the laws and customs of the people, by which violent outrage is done to all their notions of propriety.

'Two instances of the kind,' Sir Charles Wingfield reported to the Government in December 1862, 'have occurred already. A *Sombunsi* estate has passed into another tribe by a will made by a Taluqdár a few days before his death, and deep discontent pervades all the members of that ancient race. For the uses of a landed aristocracy, it is not enough in this country that large property be accumulated in single hands. The possessor must be connected by caste and tradition with the land. The great Hindú Taluqdárs are mostly chiefs of clans, and if the estates of the great *Báis*, *Sombunsi* and *Buchgoti* houses were to pass into the possession of men of other races, the new class of landholders would fail to secure the attachment of the population of their estates; the universal feeling of their country would be against them; and, instead of conducing to the good government and prosperity of the province, they would become a source of dissension and disquiet.'

Believing this to be a matter of political importance, I think that if, while we strictly carry out the engagements made by the Government of Lord Canning, we can prevent, to some extent at least, the evils which Sir Charles Wingfield foresaw, we shall be doing what is right. And I believe that we shall also be doing what is agreeable to the majority of the Taluqdárs themselves. In saying this I have no authority to say that the Taluqdárs will approve the particular provisions of this Bill, by which I endeavour to gain these objects, for I have had very little communication with the Taluqdárs upon this

part of the subject. They will have the opportunity of considering the Bill maturely, and giving their unbiassed opinions regarding all of its provisions.

Sections 11, 12, 17 and 19 show the restrictions which the Bill proposes to place upon the power of a Taluqdár to dispose of his estate by gift or bequest. Section 11 is based upon Section 101 of the Indian Succession Act. Under it the power of a Taluqdár to create successive interests in his property by gift or bequest is limited. Such power will not extend beyond the lifetime of one or more persons living at the time of the Taluqdár's death, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attain full age, the property transferred or bequeathed is to belong. Section 12 provides that, if a Taluqdár desires to give or bequeath his estate to any person not being the legal heir, or being a person who would have been the heir under the former custom of the family if no conditions on the subject had been inserted in the sanad, he can only do so by an instrument of gift or will executed not less than twelve months before his death, and publicly registered. Similar provisions in Sections 17 and 19 are intended to place a check upon the gift or bequest of estates to religious or charitable uses. Section 19 is based upon Section 105 of the Indian Succession Act.

I think it probable that the propriety of these Sections may be the subject of much discussion. I do not think it necessary at this stage of the Bill to do more than call particular attention to them. I do not affirm that they form essential portions of the Bill. Nor do I pretend that they will completely secure the objects that I have had in view, and I admit that if a Taluqdár is determined to defeat their intention, he may find the means of doing so. But they will, I think, so far as they come into operation, have a decidedly beneficial effect. It may be added that if these restrictions were much more stringent and numerous than I have proposed to make them, an Oudh Taluqdár would still practically have greater power over his estate than that which is possessed by most of the proprietors of land in England, for between entails and marriage-settlements, and other obligations, it seldom happens that the owner of a great estate in England can dispose of it as freely as a Taluqdár will be able to do in Oudh.

If, however, any Taluqdár should think these provisions insufficient, and should wish to guard more completely against the danger that his family estate may hereafter be broken up and transferred to strangers, or if he should object to these provisions on other grounds, Section 24 of the Bill gives him a complete remedy. Under it, he will be able to replace his estate under the operation of the Hindú or Muhammadan or local law, which would have been applicable if he had inherited the estate according to the former custom of his family.

To these Sections, of which I have now been speaking, there was nothing corresponding in the Bill introduced by Lord Canning in 1862. Neither was there anything like Section 23, which enables a Taluqdár to whose family the rule of primogeniture was not applicable before the sanad was issued, to revert to the rule of succession formerly followed in his family. But this provision is not, I think, in any way inconsistent with Lord Canning's veiws, expressed in the orders of the 17th July 1860 which I have already quoted, and upon other occasions, and I believe that it will be agreeable to some of the Taluqdárs who, although they agreed to adopt the rule of primogeniture, would now be glad to be able to return to the ancient custom of their families.

Sections 13 and 14 must be noticed. Under the Bill of 1862, if a Taluqdár transferred his estate, or any portion of it however small, to any person, the succession thereto would ever after have been regulated by the rule which was applicable to the original Taluqdár. Thus, if a Taluqdár to whose family the rule of primogeniture applied, sold a small patch of ground to a shop-keeper, or to another Taluqdár whose estate remained under the operation of the Hindú law, this patch of ground would always have been subject to the rule of primogeniture, although that rule applied to no other portion of its owner's property. This would have been, I think, extremely objectionable and inconvenient. The present Bill provides that, in such cases, the succession shall be regulated by the rules ordinarily applicable to the property of the person into whose possession the land in question has passed.

I have referred to the urgent necessity of legislation regarding the execution of wills. There can be no doubt that, in consequence of the absence of any legal provisions on this subject, the estates of Taluqdárs are now exposed to serious danger. The power of making wills is a power almost unknown to the Hindú or Muhammadan law acknowledged in Oudh, and there are now no securities for the due exercise of this power, such as those which have been found necessary in all countries in which the practice of making wills prevails. When I asked for leave to introduce this Bill, I quoted a case in which one of the Oudh Taluqdárs, a Hindú lady, sitting behind a curtain and unseen by any witnesses, gave away by word of mouth a valuable estate held under sanad from the British Government to a person altogether out of the regular line of succession. There can, I believe, be no doubt that the Courts were right in deciding that, under Hindú law, this disposition of the property was valid. I may properly quote, as applicable to this part of my subject, the following passage from a letter addressed by the Government of India, in the Legislative De-

partment, on the 22nd August 1865, to the Local Governments and Administrations, regarding the Indian Succession Act:—

'The High Court at Bombay has decided that a Hindú's will need not be attested, and the High Court of Madras has lately declared, in a learned and elaborate judgment, that a Hindú's will need not be in writing; in other words, that a Hindú may make a valid nuncupative will, and this without any formalities similar to those required in such cases by European systems of jurisprudence. So, Hindús' nuncupative wills were held valid by the late Supreme Court at Fort William, and are recognized by the present High Court of Judicature for Bengal. Considering the facilities with which frauds in setting up nuncupative wills are attended (for false swearing is more easy to perpetrate and more difficult to detect than forgery), it may perhaps be doubted whether the benefits arising from the introduction among the Natives of the testamentary power, are not counterbalanced by the encouragement which its recognition by our Courts at present affords to perjury. Moreover, the same evidence that sets up a false nuncupative will may practically revoke a true written one. The witness has only to declare that the testator made a nuncupative will subsequent to the date of the written will, and revoking the latter; and his evidence, if believed, destroys the written will, however solemnly executed or carefully preserved. Lastly, even in the case of a genuine testamentary disposition by word of mouth, the certainty of writing is replaced by the frailty of memory.'

I think that the necessity for legislation on this subject is obvious. As I before said, the British Government has created rights which the existing law is incapable of protecting, and I think it the evident duty of the legislature to supply the protection which those rights require.

I propose to supply this protection by applying to the wills of Taluqdárs the provisions of the Indian Succession Act, so far as those provisions appear suitable. And I ought here to state that, in determining what parts of that Act may properly be made applicable, the admirable opinions recorded by Sir A. Bittleston of the Madras High Court, on the 13th November 1865, on the subject of extending to Hindús and Muhammadans such parts of the Indian Succession Act as relate to testamentary succession, have been very closely followed. I believe that no other course that could be taken would be so satisfactory as this. The provisions of the Succession Act which refer to the execution, attestation, revocation, alteration, and construction of wills, are exceedingly clear and simple, and they seem to meet completely every requirement of the present case. There was nothing corresponding to these provisions in the Bill of 1862.

The provisions regarding intestate succession, contained in Section 20 of the Bill, are intended to define the manner in which the rule of primogeniture is to be applied. There is only one difference of any importance between the rules in this Section and those contained in the Bill of 1862. In that Bill it

was provided that, in default of any male heir, the estate of the Taluqdár would pass to his widow, or if there were more widows than one, jointly to his widows, for her or their life-time only. I believe that the latter part of this provision was not approved by the Taluqdárs, and it seems far better that the estate should in any case be held only by one widow at a time, and not by several widows jointly.

Section 21 provides for the maintenance of widows and children, and for the education of the sons of Taluqdárs. There was no provision of this kind in the Bill of 1862, but I think that its justice will be universally admitted.

Section 22 provides that, in case of the intestacy of a Taluqdár to whom the rule of primogeniture does not apply, the succession shall be regulated by the ordinary law. This is in accordance with Lord Canning's Bill, and it requires no explanation.

The third part of the Bill requires the Chief Commissioner to make lists of the Taluqdárs to whom the provisions of this Act are to apply, distinguishing those to whose families the rule of primogeniture has been made applicable by the sanads, from those whose estates remain under operation of the Hindú or Muhammadan law. Although the procedure laid down in the Bill for the preparation of these lists differs from that proposed in the Bill of 1862, the principle now followed is the same as that which was approved by Lord Canning. This principle is, that it rests with the executive Government alone to declare who the persons are upon whom these estates and these privileges have been bestowed.

When this has once been declared, I think that the functions of the executive Government properly cease. All questions that subsequently arise regarding the rights of Taluqdárs, must be left to the judicial tribunals. In this respect the present Bill differs from that of 1862. It was then proposed that no Civil or Revenue Court should have any jurisdiction in case of disputed claims to the succession to or possession of any taluqa, and that the authority to determine such claims should be vested in the Chief Commissioner, subject to confirmation by the Governor General in Council. Although this may have seemed expedient in 1862, I do not think it likely that there will now be any inclination in any quarter to reserve cases of this kind for the orders of the executive Government. It seems better, on all grounds, to leave them to the ordinary tribunals, and I have no doubt that this will be the opinion of the Taluqdárs themselves.

There are only one or two other matters that need now be noticed. Section 5 of the Bill is intended to remove doubts regarding the legal position of the six persons whose estates were specially exempted from the operation of the general confiscation of all landed property in Oudh, declared in the proclamation issued by order of the Governor General in March 1858 It is not easy to say what the legal effect of that proclamation has been; but some high authorities have been of opinion that the six Taluqdárs who were thus singled out on account of their conspicuous and extraordinary loyalty, actually hold their estates by a worse title, and are in many respects in a worse legal position, than the Taluqdárs whose estates were confiscated for rebellion, but which were afterwards restored under the sanads Very delicate questions may easily arise regarding the position of these loyal Taluqdárs, and it is desirable that all doubt upon the subject should be removed. It is not the least remarkable or the least suggestive fact connected with the policy that has been followed in Oudh, that it is now argued that, if we desire to bestow a valuable boon upon these Taluqdárs who thus made themselves conspicuous for their loyalty, we cannot do better than to place them in the same position as that which has been assigned to the Taluqdárs who distinguished themselves by their violent and persistent rebellion, and whose estates were confiscated as the punishment of their offences against the Government.

There is only one other point upon which I need now speak. It will be observed that the Bill refers, not only to Taluqdárs, but to grantees who received estates from the British Government as rewards for loyal services. It was the declared intention of Lord Canning that these grantees should be placed on the same footing as the Taluqdárs: this was laid down in the Bill of 1862, and the present Bill follows the same course.

I now, Sir, introduce this Bill. It is a Bill which will, I hope, be thoroughly examined and discussed, not only in this Council, but by the Taluqdárs whom it so closely concerns, and by the public generally. Until it has received this complete examination, there ought to be no proposal to make it law. It deals with many questions of great complexity and difficulty, and it is highly probable that important improvements may be suggested. But I think that the Bill, even in its present shape, will at any rate be held to deserve the character which I formerly claimed for it, when I said that, if it should become law, the engagements entered into by the Government of Lord Canning would be completely carried out; that the existing doubts regarding the actual nature of the legal rights of the Taluqdárs would be removed; and that the law would secure to them everything to which their sanads declare them to be entitled."

The Hon'ble MAJOR-GENERAL SIR H. M. DURAND said—"Sir, before entering upon any observations on the Oudh Taluqdárí Bill now brought before the Council, a Bill which I regard as being to the full of as great importance as the Oudh Rent Bill, and to which the formal assent of the Taluqdárs, or of the great majority of them, is as indispensable in my opinion to every Section as to the provisions of the Oudh Rent Bill, I wish to make a few remarks upon what fell from the Hon'ble Mr. Maine when, at the close of the proceedings on the introduction of the Oudh Rent Bill, he recorded his opinion as follows :—

'The Hon'ble Mr. Maine observed that it was very important that the Taluqdárs' consent should be obtained to everything in the Bill, of which they had not already expressly approved, otherwise the Bill could not come within either class of those measures which—with the concurrence, as he believed, of the Council—he had recently described as being proper to pass at Simla. For it certainly was not a trifling measure of routine, and, in the absence of the Taluqdárs' approval, it could not be said that this was a measure on which every one entitled to speak with authority had spoken.'

In saying this, the Hon'ble Member evidently referred to what he had deemed it expedient to state when the Railway Servants' Act was passed :—

'Mr. Maine desired, not for the information of the Council, but for the purpose of correcting or preventing misapprehensions which might exist elsewhere, to add a few words as to the reasons for passing urgent measures at meetings like the present. All his Hon'ble colleagues well knew that it was simply impossible to keep the Council for making Laws and Regulations together at any one place whatsoever in India for more than a few months. The organization given to the Council by the Indian Councils' Act, and the instructions simultaneously issued by Her Majesty's Government, which were binding on the Government of India, rendered this result inevitable. It was a consequence, not solely of the fact that the Native non-official Members could not be kept from their homes for more than a limited time, nor again solely of the converse fact that the European non-official Members could not practically attend at places which Native chiefs and gentlemen of rank visited with less reluctance than they did Calcutta—it was a consequence chiefly of the fundamental rule which distinguished the present legislature from the former Legislative Council, the rule that the official Additional Members, who naturally bore most of the burden of legislative work, should not be persons appointed and salaried to do nothing but legislate, but should continue to make their ordinary executive or judicial functions their principal occupation. It was doubtless with a view to the consequences of the fundamental distinction which it was intended to create, that the Indian Councils' Act for the first time conferred on the Governor General a new power of legislating in emergent cases by Ordinance, without the advice of any Council, executive or legislative. But Mr. Maine apprehended that, when a quorum (though even a bare quorum) of the Council could be obtained, the Governor General would often prefer, and that His Excellency personally preferred, submitting to it urgent legislative measures, on account of the greater opportunities of discussion, and of explaining the grounds of action which were afforded by a meeting at which even a limited number

of Members was present. Apart, however, from emergent measures which were submitted to the Council as an alternative selected by the Governor General in preference to legislation by Ordinance, Mr. Maine considered (and he felt sure the whole Council would agree with him) that it would be very wrong to proceed, at meetings at which it was difficult or impossible for most of the Additional Members to be present, with any business of importance, or on which material difference of opinion might arise. There were two classes of measures only (independently of urgent measures) which Mr. Maine considered legitimately submitted to the Council when it was not full. These were trifling measures of course and of routine, and measures on which everybody entitled to speak with authority had spoken. Measures of this last description constituted a not inconsiderable part of the Council's business, and they were always passed by the Council, even when full, more on the responsibility of the authorities recommending them than on that of the Council itself. Certainly, at the present sittings, the Legislative Department had no intention of asking the Council to consider any measure which did not belong to the classes specified.'

These remarks of the Hon'ble and learned Member met with the approval of the Right Hon'ble Mr. Massey and the Hon'ble Mr. Taylor. Sir, it is with reluctance that I differ from so well informed a section of your Excellency's Council; but as I do differ, and as my silence might confirm the impression of the Hon'ble Mr. Maine as to the concurrence in his views of the Council, I feel it my duty to prevent any misconstruction as to my own opinion, and to state distinctly that no apologetic explanation whatever was necessary for the introduction of these two very important Oudh Bills into this Council whilst holding its sessions at this place; and that I hold it inexpedient to endeavour to put upon the free action of this Council, any quasi-legal restriction neither specified nor warranted by the Indian Councils' Act.

As your Excellency was present at the deliberations which took place in the Council of the Secretary of State, when Section by Section of the Indian Councils' Act was most carefully considered and discussed before the Act itself was laid before Parliament and obtained its sanction, you, Sir, are aware, as well as myself, that among the main objects of the Act was the intention to mobilize, so to speak, the Government of India, to render it peripatetic, and to facilitate its transfer from one part of India to another without detriment to its functions. Accordingly power was conferred on the Governor General in Council to assemble his Council, from time to time, at such place or places as it should be advisable to appoint—(Section 9).

Conjoined with this intention of rendering easy the mobility of the Government of India, was the prevailing feeling, a very strong one, that the Governor General should not, as a rule, be separated from his Council; and with this view provision was made to obviate difficulties with regard to the

movement of the Council and the presence of Additional Members for purposps of legislation—(Section 10).

At the same time, it was felt that critical circumstances might arise rendering it necessary for the Governor General again to do what has, on more than one occasion, been previously deemed imperative, namely, that, under an exceptional condition of affairs, internal or external, the Governor General should have the power of proceeding, without the attendance of his Council, to the theatre of action; and when there, should be empowered to act with the speed and vigour which the crisis might render imperative—(Section 6 and Section 23).

Now, Sir, the difference between the Hon'ble and learned Member and myself is, that instead of regarding the 23rd Section of the Act, namely, that which empowers the Governor General, in case of urgent necessity, to make Ordinances having force of law, as being intended to supplement the ordinary course of legislation, I read this Section mainly in connection with Section 6, which authorizes the visit of the Governor General to any part of India unaccompanied by his Council, and arms him with the necessary power to meet a critical and emergent juncture. The operation of Section 23 is not limited to the absence of the Governor General from his Council for obvious reasons; but no one can read the Secretary of State's comment upon the Ordinance Section without being convinced that its provisions were intended to cope with very extraordinary events, and circumstances far more allied with such as warrant the absence of a Governor General from his Council, than any mere ancillary action to supplement ordinary legislation. His words are :—

'By Section 23, the Governor General of India is invested with a new and extraordinary power of making and promulgating Ordinances, in cases of emergency, on his own responsibility. It is due to the supreme authority in India, who is responsible for the peace, security, and good government of that vast territory, that he should be armed with this power; but it is to be called into action only on urgent occasions; the reasons for resort to it should always be recorded, and these, together with the Ordinance itself, should be submitted, without loss of time, for the consideration of Her Majesty's Government.'

This envisages a state of affairs very different from those under which ordinary legislation takes its course. To remedy, however, the minor inconveniences which might arise in connection with Additional Members from change of place for the session of the Council, or from other causes, it was pointed out by the Secretary of State that Section 10 of the Act prescribed as a maximum a considerable number, not with the view of the entire number being summoned at once, but in order that there might be a reserve of vacancies to which Addi-

tional Members could be nominated at such times and on such occasions as the Governor General might think proper. This appears quite a sufficient remedy for the accidental inconveniences that may arise whether the Council be at one place or another, and obviates the necessity for cramping the functions of the Council by limitations or restrictions not in the Act. I could have wished that, on this occasion, there had been present one or two of the Oudh Taluqdárs as Additional Members. We frequently have Additional Members discussing subjects which affect their own interests, and a man like Rájá Mán Singh, the leader and representative of the Taluqdárs, is peculiarly fitted by his station, experience, acquaintance with the subjects before us in these Oudh Bills, great ability, and ready power of reasoning, to have proved most useful at this assembly. He would have been of material assistance in clearing up points which now offer difficulties, and in solving doubts which now involve references and delays. I have no doubt that the Hon'ble Mr. Strachey and Colonel Barrow, who knew them well, might have suggested a fit man or two from among the Taluqdárs to associate with Rájá Mán Singh as Additional Members, if there were vacancies available. I am certain that their attendance on this occasion would have been advantageous to the satisfactory consideration of these Bills, and productive of confidence on the part of the Taluqdárs. Their presence might also have tended to allay a feeling which is, I am bound to say, very prevalent. The sentiment to which I advert is, that the compromise to which the Taluqdárs have been brought is the effect of strong and continuous pressure—the compromise is by many regarded as wanting in mutuality;—the Taluqdárs on the one hand, and the Chief Commissioner, acting under the direct instructions of the Governor General, on the other, are hardly considered to have been on fair and equal terms. It is pretty generally known that the leader of the Taluqdárs was with difficulty, and only after long persuasion, induced to accede to any compromise; and the suspicion is that, where there is a heavy preponderance of power on one side, persuasion is apt to assume the quality of moral compulsion of the weaker side. Possibly much of this might have been removed or softened had the opportunity for free utterance and discussion in this place been afforded to Rájá Mán Singh and an associate Taluqdár. No one at this table is more competent to discuss both the Oudh and the North-West Province systems than Rájá Mán Singh, and there would have been advantage in his presence. However, although I regret their absence, and feel that their presence might have helped in some degree to dispel doubts not so easily removed or shaken in their absence, I am not in favour of regarding the limited number of Additional Members who have been able to attend as forbidding, when a quorum is formed, the entertainment by this Council of measures of importance, such as

these Oudh Bills, or necessitating, if such Bills are entertained, any apologetic explanations. Still less am I in favour of the imposition of restrictions not in the Indian Councils' Act. There are doubtless advantages when the Council meets at a presidency town, whether Calcutta, Madras, or Bombay; but bearing in mind the intentions of the Act, I object to the inconvenience which may accrue to future Governments from a construction put on Section 23, which I contend is foreign to its purport and intention, and the effect of which, if accepted on the authority of the Hon'ble and learned Member, fetters the action and utility of this Council in a way neither contemplated nor prescribed by the Indian Councils' Act, but absolutely contrary to its spirit.

I now pass on to a consideration of the Bill before the Council, which is, I think, a far better constructed Bill than its predecessor, drafted under the administration of Lord Canning. Before pointing out in what respects I give the preference to the present Bill, I must advert to some passages which fell from the mover of this Bill, when leave was asked for its introduction, and which call for a few observations. I allude to passages from the tenor of which it might be supposed that, when Sir R. Montgomery, as Chief Commissioner of Oudh, entered upon the administration of that province, his invitation to the Taluqdárs to return to their allegiance to the British Government, and to submit to its authority upon terms certainly very favourable to men in open rebellion, was an invitation due on his part rather to a sense of weakness than of strength, to a conviction of the inability of our forces to cope with the rebels and the mutineers arrayed against us, rather than to a generous policy towards men practically vanquished. Such an impression, very erroneous in every respect, would neither be beneficial if entertained by the Taluqdárs, nor if it obtained currency throughout India. Such a misconstruction of the real motives which actuated the British Government in adopting the policy it pursued, would, I think, be unfortunate. I hold that it cannot for a moment be doubted that, with the force at his command, Lord Clyde had the means of stamping out with an iron heel all opposition on the part of the Taluqdárs, and that before the campaign was over, the whole of Oudh was prostrate. Under such circumstances, Oudh was at the mercy of Lord Canning, and had he pleased, there was nothing to have prevented his persisting in the administrative policy of Lord Dalhousie, and re-establishing what is called the system of the North-Western Provinces. The rebellion would by many have been held to justify the forfeiture of their estates by the Taluqdárs who had taken up arms against us; whilst the others might have been disposed of by the slower, but very sure, process of the North-West Province system. He has, in fact, been inconsistently enough charged by the advocates of that system, in

consequence of his deferring the reversal of Lord Dalhousie's policy, with having driven the Taluqdárs into hostility, forced upon us the necessity of reconquering Oudh, thus entailing upon the Government of India the prosecution of a bootless campaign, the heavy loss of a revenue of which the Government stood greatly in need, the imposition of the unpopular Income Tax, and all this for the display in the end of an ostentatious magnanimity. Well, Sir, it is not usual for a Governor General new to India to enter at once on an off-hand upsetting of his predecessor's policy, more especially when that predecessor is a Governor General of the reputation which Lord Dalhousie had acquired as an able administrator who had for eight or nine years seemingly been eminently successful in his government of India. He can hardly be very fairly held responsible for at first accepting what he found established on such authority. But when the events of 1857 had opened the eyes both of Sir J. Outram and Lord Canning, the latter, conscious of the gross injustice which had been perpetrated towards the Taluqdárs in the course of the summary settlement of 1856, was not disposed to visit the rebellion of 1857 with the extreme penalty which he was legally entitled to inflict. When, therefore, he received the views of Sir J. Outram that the system of settlement with the so-called village proprietors had not answered in Oudh, and that recourse must be had to the taluqdárí arrangement, Lord Canning not only endorsed Sir J. Outram's views on this cardinal point, but directed that they should be carried out in a more liberal spirit than had been recommended by Sir J. Outram, in the following passage :—

'The system of settlement with the so-called village proprietors will not answer at present, if ever, in Oudh.

'These men have not influence and weight enough to aid us in restoring order. The lands of men who have taken an active part against us should be largely confiscated, in order, among other reasons, to enable us to reward others in the manner most acceptable to a Native. But I see no prospect of restoring tranquillity, except by having recourse, for the next few years, to the old taluqdárí system.

'The Taluqdárs have both power and influence to exercise either for or against us. The village proprietors have neither.

'Taluqas should only be given to men who have actively aided us, or who, having been inactive men, evince a true willingness to serve us, and are possessed of influence sufficient to make their support of real value.

'There will be no difficulty in settling the rent to be paid from each taluqa, and this should be distributed rateably over the several constituent villages, the exact amount to be paid by each villager to be settled among themselves. By this arrangement, the Taluqdár

will be unable to raise his rents, and he should, moreover, be given to understand that, on his treatment of the people under him, his admission to engage at the revised settlement would, in a great measure, depend. This, in my opinion, would suffice for the protection of a body of men not one of whom, not even those with whom the settlement was made to the exclusion of the old Taluqdárs (some of eighty years' possession !), have come forward to aid us in this juncture. The Taluqdár should be responsible for the disarming of the population, the destruction of the forts, and the apprehension of offenders within the limits of his estate. He should be made to feel that he holds upon a strictly 'service' tenure, dependent entirely on the punctual discharge of his duties as a landholder. *Very* influential men, or men who have done real good service during the present crisis, might have a portion of land in jaghír conditional on constant and zealous service. This measure would enlist this powerful body of men on our side, while it entails no injustice on the cultivators of the soil, who have been accustomed all their lives to the taluqdárí tenure, with power on the part of the Taluqdár to raise his rents *ad libitum*. In a word, the men capable of restoring order and confidence will be gained over, while the men who will be benefited by the restoration, but who will never move a hand or foot to obtain or hold such a blessing for themselves, will suffer no hardship and be in a much better condition than they were before annexation.'

It is only necessary to refer to the 34th paragraph of Lord Canning's instructions to Sir R. Montgomery, drawn up in reply to Sir J. Outram's despatch, a paragraph which the mover of this Bill read out to the Council, to be satisfied that the Governor General of 1859 had gone through a painful experience in 1857, and in spite of the provocation that the soil of Oudh was stained with the blood of some of our best and bravest men, and of some of our gentle and guiltless women, that it was both just and advisable in the province of Oudh to acknowledge the rights of the Taluqdárs, and in consideration of their treatment in 1856, a treatment on which the Hon'ble Mr. Strachey has himself dwelt, to condone much that had happened in 1857 and 1858, and to open a door of reconciliation by the abandonment of an erroneous system, and the return to one congenial with the habits and feelings of the people, and the prescriptive rights of the Taluqdárs.

We had it somewhat dogmatically asserted that the grant of the sanads to the Taluqdárs involved a change of policy, and was a sort of excrescence on the the taluqdárí system which did not properly belong to it; and if I understood aright, Sir Charles Wingfield was given the credit of the innovation. This is hardly fair either to Sir Charles Wingfield, or to the able officer, Colonel Barrow, by whom the suggestion for the grant of sanads was first formally pressed upon the consideration of Government. Originally it had been adverted to in the passage which I have quoted from Sir J. Outram's despatch, for he had been particular in specifying the conditions under which the Taluqdárs restored to their estates should hold them, strictly on "service" tenures dependent entirely on the

punctual discharge of their formal obligations. No one knew better than Sir J. Outram that a taluqa or jaghír held on these terms required a formal instrument, in fact, a sanad; and the issue of such a deed was involved in the very nature of his recommendation; for, without it, the recommendation was futile. Still, strictly speaking, the grant of these sanads was pressed by Colonel Barrow, who, as Special Commissioner of Revenue, stated distinctly in the 11th and 12th paragraphs of his Report of the 24th June 1859, the reasons which rendered it advisable to issue the sanads.

'11. The other statement E refers more particularly to the larger taluqs, and exhibits what we left the Taluqdárs in 1856, and in how far we have now restored them to their original status by reverting to the taluqdárí system. The four largest taluqdárí districts, as per margin, show the greatest amount of change: and although Gonda and Baraitch are equally composed of large taluqs, they were not in the former settlement upset to the same extent as in what was the old Fyzabad division, and it is here some delicacy and firmness is requisite to re-establish the system ordered in Government letter No. 3502, paras. 33, 34, 35. It must not be forgotten that the possession of certain rights in 1264 was the *test* by which the Taluqdár was overthrown, and that any minute investigation now to establish a record of such rights gives rise to doubts in the minds of the Taluqdárs, that as we ousted them after the one season's settlement in 1856, so shall we again at the expiration of this settlement, and in the minds of dispossessed zamíndárs it raises hopes that there will yet be a road open to future litigation. The late Chief Commissioner, in my circular No. 27, and the Chief Commissioner, in yours No. 52, have laid down restrictions in respect to this record of rights, which, if adhered to, would suffice; but to give the present settlement a fair chance, and to preserve the settled state of things now for the first time during our rule commencing in Oudh, adverse claims must be set at rest, the superior right of the Taluqdár be unflinchingly supported, and the rights now conferred be firmly and (*vide* circular No. 31) fixedly upheld.

Fyzabad, Sultanpore, Pertabghur, Roy Bareilly.

'12. As a means of settling the minds of both parties, I had the honour to suggest that sanads should be given to the largest Taluqdárs on the part of the Chief Commissioner, and with my letter No. 2672 of 7th May, the lists were forwarded for this purpose, for although circular No. 31 has been freely circulated, doubts still do exist, and this feeling of insecurity may do an infinity of mischief.'

The main reason Colonel Barrow assigned was the doubt which our settlement-proceedings in 1856 had unfortunately ingrained into the Taluqdárs that, at the expiration of the new settlement, they were again to be ousted as they had been previously. Such a suspicion was not confined to the Taluqdárs, but also raised the hopes of the village occupants that the North-West Province system would, as soon as decently practicable, be reinstated. Nor can it be matter of surprise that, with the example of the results of that system close to their own doors, so to speak, the Taluqdárs, still smarting under the indig-

nities of 1856, should have felt misgivings. They would naturally argue that, as Lord Canning could reverse the administrative policy of Lord Dalhousie from which they had suffered so severely, there was nothing to hinder a future Governor General from, in his turn, subverting that of Lord Canning, unless their rights were formally and solemnly confirmed by an instrument which placed them beyond question. I think the Taluqdárs were right, and that they showed a sound foresight and a just appreciation of the importance attached by the British Government to a formal deed. It is creditable to the character of our rule in India that its Chiefs and people feel that, amidst the perpetual changes of men and the violent oscillations of measures, there is one element of stability upon which they can rely even in our administration,—that no Government will lightly violate a formal deed of any kind, treaty, agreement, or sanad, and that it is bound by these fetters of its own forging. The Hon'ble mover of this Bill spoke with somewhat of a sneering tone of a sort of superstition which beset Sir C. Wingfield for institutions of an English type. I could not exactly make out the precise bearing of this allegation; but I venture to think, Sir, that both Colonel Barrow and Sir C. Wingfield were, in this matter of the sanads, far more influenced by a practical knowledge of the people they were dealing with, than by any particular phase of superstition. I need hardly remark that in India under every form of Government, Hindú or Mussulman, as well as British, a special value is attached to formal instruments emanating from the Ruler. We have lately issued such to the Chiefs of the Central Provinces. In this feeling the Taluqdárs of Oudh were not peculiar, and it was natural that they should wish for Letters Patent embodying the assurances and promises previously publicly made; and it was to the credit of Colonel Barrow and Sir C. Wingfield that they moved the Government of the day to seal its good faith by granting them.

I have said that what had taken place in the North-West Provinces was calculated to render the Oudh Taluqdárs earnest in securing their status by Letters Patent, a statement which may be at variance with the eulogy pronounced on the North-West Province mode of treating Taluqdárs. The eulogy was accompanied by a quotation of a fundamental principle said to have been laid down by the late Mr. Thomason. Sir, there is no man for whom, when living, I had a greater esteem and admiration; there is no man dead for whose memory I entertain a deeper reverence; but, Sir, if I had to select an instance to show how one thing can be said and another done, the text which I should probably choose would be this very quotation. General principles, however admirable, depend for their operation on specific application. It is the spirit in which a system is worked rather

than the letter of a detached paragraph which forms its character. The practical originator of the North-West system was Mr. Bird, not Mr. Thomason, and the principle quoted is anterior to either. But if any of the members of this Council are unacquainted with the actual working of this system, let them compare this principle with the Sections 100 to 115 of 'Instructions to Revenue Officers'; and if that does not satisfy them, let them compare the orders of the Court of Directors of the 2nd August 1853 with the action taken upon them. I allude specially to the ten per cent. clause on *málikána* to Taluqdárs, and then let them pronounce on the spirit and practice in which a system that professed "to alter nothing, but only to maintain and place on record what it finds to exist" has been actually worked. It is not my object to enter into a criticism or analysis of the North-West Province system, and it is only in justice to Sir C. Wingfield that I have dwelt upon the subject so much as I have. Any one who has had to wade, as has been my lot, through the Oudh official papers of 1856, and the conflict between Mr. Jackson and Mr. Gubbins, knows that in the earlier period of his connection with Oudh, Sir C. Wingfield, trained in the North-West Province school and system, was as much imbued with its tenets as others. The later series of official papers show that gradually the errors of the system forced themselves on his attention; and I think it greatly to his credit that, in spite of early training and prepossession, he did what very few men have the faculty of doing, broke clear from the prejudices with which he started, and arrived at the conviction that justice was as due to a man with 800 villages as to a man with eight acres. If, on the advantages of the law of primogeniture and the relations of landlord and tenant, he had strong theoretical opinions, we know from the avowals which the Hon'ble Mr. Strachey has made in this Council that he holds in equal strength contrary theoretical opinions. As far therefore as impartiality of opinions is concerned, we are much where we were before. I feel it, however, due to an absent man of his ability and character to say that, even if Sir C. Wingfield's administration of Oudh were open to the charge, which I am far from admitting that it was, of any excess of reverence for the policy and promises of Lord Canning, I for one greatly prefer the courteous but uncompromising honesty, the straightforward integrity with which Sir C. Wingfield stood forth as the champion of the Taluqdár rights and system, to any subservience, on his part, to a system of the fallacies of which he had convinced himself, and which, whilst it says one thing, does another.

The Council will remember, when taking the present Bill into consideration, that we owe its prototype to the late Lord Canning, and to the general concurrence of the Taluqdárs as formally made known to Lord Canning by Sir C.

Wingfield in his communication of the 22nd December 1862. I cannot say that that Bill seemed to me, though drafted by the late Mr. Ritchie, in any respect satisfactorily drawn up. It aimed at dovetailing two absolutely contrary principles of law, and besides this, after pronouncing invalid in one Section the general and local law, it rehabilitated it in another in a very loose manner. In a note written in August 1863, I observed with respect to the first Bill—

'With regard to the 1st and 2nd classes of Taluqdárs, the aim of the Draft Act is to combine two distinct principles. So long as the holder of the sanad of a 'list' estate lives, there is no limit to the absolute control over his estates which the Taluqdár enjoys. The principle *voluntas hominis constituit hæredem* is in force, and it is only in the event of his dying intestate that the converse principle *la loi fait les héritiers, et non volonté de l'homme* comes into play.

'There is nothing in the Draft Act to qualify the absolute control of the Taluqdár, for the words quoted by some of the Oudh Taluqdárs as affording them an opening to impose conditions binding on the person into whose hands an estate may pass, and as thus conferring on them the power to entail their estates, are a manifest misconstruction of the meaning and scope of Section 2, the last clause of which would stultify all that precedes, if such an interpretation could be put upon the concluding words.

'The Draft Act, therefore, contains no check whatever on the free power of a Taluqdár to dispose of his estate as he pleases, and in this respect it exceeds even the civil law, which, though it gave the greatest latitude to the powers of testament and the institution of heirs, yet provided a remedy in case of abuse in the *querela de inofficioso testamento*; consequently, there is no security whatever for the family of a Taluqdár, as the latter can sell, in whole or in part, or will away by bequest the estate to any one, and the person thus inheriting the estate steps into the same limitless control over the estate covered by the sanad.'

With respect to the difficulty of blending conflicting principles of law, I am afraid it is inherent in the objects which are sought to be accomplished, and it besets the present Bill as much as it did its prototype. But there is one point in which the new is in my opinion very preferable to the old Bill, for in the two clauses of Section 21 it provides a remedy against the abuse of the full power to alienate an estate conferred on the Taluqdárs. Provided this very important Section has the consent of the Taluqdárs, or of a large majority of that body, it removes what was the essential blot in the old Draft Bill. At the same time it must be observed that in this Section the general and local law is called in to supplement and control the principle of absolute right over the estate noted in Section 10 of the Bill. As the general and local law is as vague a term as it may be undefined as a reality, and as these provisional remedies against the abuse of sanad-rights open a door to much and very difficult liti-

gation, and as, moreover, they constitute a material infringement of the rights conveyed by Lord Canning, we ought to have formal intimation of the consensus of the Taluqdárs.

The latter remark applies to other Sections of the Draft Bill, notably to the 14th, which differs essentially from the provisions of the old Bill, and to the 18th and 19th on testamentary succession, which, however in themselves advisable, incorporate provisions more connected with our technical system of law, than with the habits and customs of the Taluqdárs and their families, who are not fond of minute legal intervention and registry or Court procedure in such matters.

The foregoing remark applies also to Section 17, which deals with gifts to religious or charitable uses. Theoretically, I am in favour of some such check on mortmain alienations, but practically we are, I think, bound to consult the sentiments and habits, and the religious customs of the Taluqdárs, whether Hindú or Mussulman.

Sections 23 and 24 are certainly neither in harmony with the avowed policy of encouraging succession by primogeniture, nor in accord with Section 10 of the old Draft Bill. The Hon'ble mover of the present Bill argues that these Sections are not adverse to the policy of Lord Canning, but I think this position doubtful, as action on Sections 23 and 24 virtually cancels the absolute powers conferred by the sanad. It may, however, be argued that it is in the spirit of the latitude of election conferred on the Taluqdárs to sanction the option, opened to them in these Sections, to abrogate the full powers of the sanads. Possibly it may be, but the matter demands careful examination both as to policy and effect on the conditions and obligations of the sanads, for this is not merely a question of the assent of the Taluqdárs.

Section 25 is in apparent conflict with Section 9 of the old Bill.

Nothing is said of sales, exchanges, mortgages; whence I infer, as also from the remarks which fell from the Hon'ble Mr. Strachey, that questions arising on such transactions are considered as wholly under province of the Civil Courts.

I have before remarked on the vagueness of the term "general and local law," which occurs frequently in the clauses of this Bill, but from the Statement of Objects and Reasons I infer that the local law means the custom of the family, whether Hindú or Mussulman, qualified by the supervenient general law of India in control of abuses of either Hindú or Muhammadan law, or of any very anomalous local custom.

I cannot but regret the absence from this Council of any able representative of the Taluqdárs, and the circumstance has made me dwell repeatedly on the expediency of our having some more formal expression of the cordial consent of the Taluqdárs, or of a large majority, than any we have as yet before us. I say this in no hostility to the general provisions of the Bill before us, for, excepting the doubts which I have expressed on some of its Sections, I regard the present Bill as in the main an improvement on its prototype of 1862."

The Hon'ble MR. MAINE said that he did not intend to enter at present on the merits of the Bill, but he must state that the views which he expressed on a late occasion had been quite misunderstood by his Hon'ble and gallant friend. He had never meant for one moment to deny the legality of sittings of the Legislative Council at a distance from its ordinary place of meeting. If that had been his meaning, it would have followed as an inference that all measures passed at such sittings were null and void. It was perfectly plain that nothing more was required under the Indian Councils' Act than that the Additional Members should be summoned to some place in India, and it was for them to decide whether they would attend or not. But while MR. MAINE had not denied the legality of sittings at which the majority of the Additional Members could not practically be present, he had certainly questioned their policy. He presumed that the object of summoning Additional Members was to secure variety of opinion, and that variety of opinion was of course sacrificed if the Additional Members were absent. Moreover, unless there were urgent reason for so doing, or unless the proposed legislation were trifling, MR. MAINE did not like the look of issuing summonses to Members who might be at the other end of India, or who could not quit their official or private business, so that the summons could not really be obeyed. With regard to the intention which his Hon'ble and gallant friend had attributed to the framers of the Indian Councils' Act, MR. MAINE was of course no authority as to what had passed in the Council of the Secretary of State for India, but he really thought Sir H. Durand had overlooked the two most important Sections of that part of the Act which regulated legislative proceedings. Section 10 empowered the Governor General to summon not less than six and not more than twelve Additional Members, and Section 11 provided that every Additional Member must be summoned for two years. The maximum number, therefore, was twelve, and the period of service was two years. Now it happened that at one moment during the last sittings at Calcutta no less than ten summonses were out, which left very few vacancies as a basis for the theory of his Hon'ble and gallant friend. In fact, it was clear that the Additional Members must be

summoned with a view to attendance during a part of the year at some one place in India, since, if an attempt were made to work the Act on any other construction, if seats were reserved for persons who might appropriately be summoned to every place at which the Governor General might be present with his Council, a very nice calculation would be required to decide how many seats out of the twelve could be apportioned to each place through which the Government might pass. The Bill before the Council was absolutely necessary for the purpose of giving definiteness to law which was now in the vaguest possible condition. The existing law relating to taluqdárí estates in Oudh was furnished by the following passage in the sanads issued to the Taluqdárs :—

"It is a condition of this grant that, in the event of your dying intestate, or of any of your successors dying intestate, the estate shall descend to the nearest male heir, according to the rule of primogeniture, but you and all your successors shall have full power to alienate the estate, either in whole or in part, by sale, mortgage, gift, bequest, or adoption, to whomsoever you please."

That was a merely popular description of the rules intended to be applied, and every lawyer would see at once that between its terms there lay a vast province of jurisprudence, that to which corresponded in England the great system of Real Property Law. Lord Canning had submitted to his Council a Bill intended to complete the sanads, but the Hon'ble Mr. Strachey had not unjustly described it as being imperfect. The present was a much more perfect and satisfactory measure. It was at the same time fair to say that its superiority to the first Bill was in a great degree attributable to the Indian Succession Act, from which his Hon'ble friend's provisions relating to testamentary disposition had been taken, and which had in many instances furnished him with language appropriate to alienations *inter vivos*. The difference between the measures was in fact an excellent illustration of the value of a great body of written substantive law, capable of serving as a substratum for legislative enactments. The few doubtful questions which the Bill suggested had best be solved by the Taluqdárs themselves. Assuming, as his Hon'ble and gallant friend Sir H. Durand appeared to do, that there was any danger of illegitimate influence, MR. MAINE thought that such purpose was much less likely to be brought effectually to bear on the whole body of Taluqdárs deliberating by themselves at Lucknow, than on a stray Taluqdár or two at Calcutta or Simla.

The Hon'ble MR. TAYLOR concurred in the last observation that had fallen from his Hon'ble friend who had just spoken. He cordially shared the hope of Sir H. Durand that the general concurrence of the Taluqdárs would be obtained to this very important measure before it became law. But he thought that their genuine and hearty approval, both individually and collectively, was

much more likely to be given to the Bill after a full, free, and deliberate discussion of its provisions with the Chief Commissioner and other local officers at Lucknow; and that less moral pressure was likely to be exercised under such circumstances, than if two or three of their number had been summoned to Simla to sit in this Council Chamber and join in debates and discussions closely affecting their own interests, but of which they could not understand one word.

Referring to the Bill itself, he thought that the thanks of the Council were due to the Hon'ble Mr. Strachey for the able and lucid statement to which they had listened today. The Hon'ble gentleman had very clearly explained the force and bearing of the more important Sections of the Bill; and, for his own part, he might say that those explanations had removed from his (MR. TAYLOR'S) mind several doubts as to the expediency and necessity of parts of the measure, which the Bill itself, taken in connection with certain remarks occurring in the opening speech of the mover, was calculated to raise. He would not detain the Council by noticing any of its provisions in detail; these would be better discussed in Committee, and he would reserve any remarks he might have to make for a future occasion.

His Excellency THE PRESIDENT said,—"Considering the prominent part I have taken in questions specially affecting the Taluqdárs' interests, and the general subject of landed tenures in Oudh, I should have preferred to have said nothing in this debate. Certain remarks, however, that have fallen from Hon'ble Members render it incumbent upon me to make some observations. Sir H. Durand has expressed an opinion that one or two of the Oudh Taluqdárs should have been appointed Additional Members of Council, and summoned to this debate. Nothing, in my opinion, could have been more improper or impolitic. However high the qualifications of the Taluqdárs thus chosen might have been, they would have had not only to debate, but actually to vote upon questions closely connected with their own personal interests; and if it were right to allow Taluqdárs to do so, it might have been said that it was wrong not to allow the same privilege to those who might have antagonistic interests, and that the village proprietors and tenants ought also to be represented. I have always understood that the Additional Members of the Council of the Governor General of India for making Laws and Regulations ought to be men chosen on account of their position, character, and intelligence, and not as delegates of any particular class. Sir H. Durand has stated that there is a feeling prevalent that pressure has been put upon the Taluqdárs to obtain their consent to measures which in reality they disapproved. I have never heard of such a feeling; and

If General Durand meant to say that I, or any one connected with the Government of India, ever put any pressure on the Taluqdárs in order to get their consent to the propositions embodied in Mr. Strachey's Bills, I must say that nothing can be more unfounded than such a suggestion. The whole history of the compromise with the Taluqdárs in the matter of tenant-right, is already before the world. The demi-official correspondence which took place last year, and which has been published, will shew that the proposal to carry this compromise into effect really originated with Mr. Grey, who had always dissented from the views which I held regarding Oudh. He proposed to write to Sir Charles Wingfield on the subject; and when Sir Charles Wingfield was Chief Commissioner of Oudh, he agreed, under certain conditions, to use his influence to induce the Taluqdárs to accept the compromise that had been suggested. I acceded gladly to Mr. Grey's proposal. Sir Charles Wingfield, as every one knows, failed in his attempt; and when Mr. Strachey became the Chief Commissioner of Oudh, the negotiation came to an end. After his appointment I took no active part in the matter, but left it solely to Mr. Strachey to bring forward the proposition again or not, as he thought best. After some months, Mr. Strachey wrote to say that he could make arrangements which would be agreeable to the Taluqdárs, advantageous to the sub-proprietors and the tenants, and perhaps also acceptable to the Government. Later, some time last summer, Mr. Strachey wrote that he would come to Simla to talk the matter over, and that he would bring with him some Taluqdárs authorized to speak on behalf of the whole body. This accordingly was done; and the result was that Mr. Strachey's proposals, which were almost the same as those which had been approved by Sir Charles Wingfield, were agreed to by the Taluqdárs and by the Government. I was strongly recommended by Mr. Grey to sanction these arrangements: Sir H. Durand himself agreed to them; and they were carried out without the slightest pressure having been exercised by the Government on any person concerned. I saw these Taluqdárs at Mr. Strachey's and their own request. There was little discussion at our interview as to Oudh affairs. They expressed themselves perfectly satisfied, and I told them that I also had fully accepted the settlement of those questions that had been arrived at. The result was the passing of the Act, XXVI of 1866, to legalize the rules for determining the claims of subordinate proprietors, which the Chief Commissioner of Oudh had drawn up. This disposed of the principal questions in dispute between the Taluqdárs and sub-proprietors. And this summer Mr. Strachey came up with further propositions, to carry out that part of the agreement with the Taluqdárs which referred to the rights of tenants. These propositions, almost all of which had been previously agreed to by the Taluqdárs, were embodied in the Oudh Rent Bill now before the Council.

"So much for the transactions which have resulted in these measures.

"As to the policy originally pursued by Lord Dalhousie on the annexation of Oudh, and the policy afterwards adopted by the late Lord Canning, I think myself entitled to say a few words. There can be no doubt that Lord Dalhousie was as anxious to deal fairly with the Taluqdárs, and with all other classes in Oudh, as ever Lord Canning was afterwards. But I think that the orders which Lord Dalhousie issued in 1856 were undeniably injurious to the interests of the Taluqdárs, and were framed under an erroneous impression as to their status in the country. The misfortune was that, when Lord Dalhousie gave those orders, he was necessarily very imperfectly informed regarding the condition and the tenures of the persons to whom they were intended to apply. Had the local officers taken up in a right spirit the questions as to the relation of the Oudh Taluqdárs to subordinate proprietors and tenants, and dealt with them in the same way as such questions were ordered to be dealt with in the North-West Provinces under Lord William Bentinck's instructions, no difficulty would probably have occurred. The Taluqdárs, as a body, were an ancient aristocracy, and the bulk of their landed property had unquestionably belonged for many generations to their families. But this was not so in all cases. Some of the Taluqdárs were not of old standing, and had acquired their possessions in modern times during the gross misrule of the Muhammadan sovereigns. Some of them were creatures of a day, farmers of the revenue, hangers-on of the Court, or successful and unscrupulous soldiers. There was a manifest and great distinction between these new men and the Chiefs whose names were bound up with the history of their country. Even, however, these Taluqdárs of ancient families had sometimes added to their estates, in quite recent times, by force and fraud. On this point the evidence of that well-known friend and supporter of all Native aristocracies, General William Sleeman, who was Resident at Lucknow shortly before the annexation of Oudh, is, I think, conclusive. What ought to have been done in 1856, was, in my opinion, to distinguish between the immemorial hereditary possessions of the Taluqdárs, or those which had been so long in their families that it would have been unreasonable to inquire into the nature of the original title, or which had been acquired even recently by rightful means, and property which had been gained in recent times by the fraud or violence to which I have referred. It seems to me that if a fair rule of limitation had been laid down, and if, in the case of estates unjustly acquired in recent times, the ousted proprietors had been heard, and their cases decided on the merits—if, I say, this had been done, public opinion would have gone with the Government. There is an old Native saying, 'right should go to the right man,' and so every one would have said in Oudh. As the

Government incurred, in the North-Western Provinces, great unpopularity from the reckless way in which estates were sold for arrears of revenue, or under the decrees of the Courts, so the converse would have been the case in Oudh, and Government would have gained much popularity, if our measures had tended to the restitution of ancient rights, whether of great Taluqdárs or village proprietors.

"But although I admit that the Taluqdárs were not rightly treated, if the pendulum in 1856 swung to the point furthest from the Taluqdárs, so it swung to the other extreme after 1858. In 1856, the rights of the Taluqdárs were practically ignored; in 1858 and subsequently, the rights of all persons subordinate to the Taluqdárs were, to a great extent, placed out of Court. To me it seems that the rule applied to the sub-proprietors and tenants, was at least as hard as the other rule was unfair to the Taluqdárs in the previous year.

"In the days when these matters were first discussed I was the Lieutenant-Governor of the Panjáb, and subsequently I was a Member of the Council of India at Home. I had thus many opportunities, both from my friendship with Sir Robert Montgomery, and from the communications with which Lord Canning often honoured me, of knowing a good deal about the policy which was pursued in Oudh. My belief is, that the general character of Lord Canning's policy has been correctly stated by Mr. Strachey. Lord Canning's policy was not a policy of confiscation. He held out the olive-branch to all in rebellion who were not stained with the blood of our countrymen. He had no intention of any general confiscation of existing rights. I do not deny that, at some times, he seemed inclined more to such punishments than at others. Proclamations declaring a general confiscation in Oudh were prepared and, to some small extent, disseminated; but (so Sir Robert Montgomery told me) they were either recalled or were practically not acted upon; and this is put beyond question by Lord Canning's replies to the well known despatch of Lord Ellenborough, in which he showed that no one could say that he had actually carried out a harsh policy in Oudh.

"I agree with Mr. Strachey that there have been two policies in Oudh since 1858, and the difficulties of the first policy were greatly aggravated by measures subsequently taken. But it is, I think, impossible for any impartial man to read the letters between the Chief Commissioner and Colonel Abbott, and the orders of the Government passed thereon, from which Mr. Strachey has quoted, without seeing that Lord Canning had a strong desire to maintain the just interests of all classes in the land. In those orders Lord Canning said that even where estates had been confiscated and given in reward to loyal

grantees, he by no means meant that the subordinate rights which formerly existed should be sacrificed. Those letters of the 10th and 19th of October 1859, printed in the Schedule to the Bill now before the Council, sufficiently show that, however strong Lord Canning's feeling may have been in favour of the Taluqdárs, he did not forget the rights of others. I am satisfied that it was always Lord Canning's desire that justice should be done to all classes; and if unjust results have followed, I agree with Mr. Strachey in believing that Lord Canning would not have allowed them to be the natural consequences of his policy, and that he would have taken steps to have had them remedied.

"Sir Henry Durand alluded to the late Mr. Thomason in terms of which I heartily approve. Of all the men that I have seen in India, I have hardly met any of whom I had a higher opinion. His name, however, is constantly mentioned with disapproval when any difficulty arises respecting the settlement of the North-Western Provinces, as if he had been the author of the principles upon which that settlement was based. But what are the facts? The truth, as Sir H. Durand correctly stated, is that Mr. Thomason was in no sense responsible for that settlement. For the greater part of the time during which it was in progress, Mr. Thomason held a subordinate position. He was Collector, I think, of Azímghur, and subsequently in the Board of Revenue. But when he came into power the principles and, indeed, the details, according to which the settlement was to be conducted, had long been determined and carried into effect. Those principles were really initiated by Holt Mackenzie—one of the ablest and clearest intellects that ever worked in India. He was the real author of the North-Western Provinces' settlement, and of all the other settlements that have been carried out on this side of India, and the man by whom these principles were practically applied in the North-Western Provinces was not Mr. Thomason, but, as Sir H. Durand observed, Mr. Robert Mertins Bird. To Mr. Bird were mainly due all the instructions that were issued. I am entitled to speak with some authority regarding the spirit in which the settlement of the North-Western Provinces was made; for I myself made settlements in three different districts; and I can affirm that no orders were laid down that could possibly be obnoxious to the interests of any class of the population. It was understood that the settlement officers were to look into the rights of all persons connected with the land, whether as landlords, middlemen, or tenants, and to act in all disputed cases as mediators and umpires, rather than as judges. I agree that the North-Western Provinces owe much of their prosperity to their settlement. I have known those Provinces for the

last five and thirty years, and the change that has taken place in their condition and appearance since I first knew them is something wonderful. Five and thirty years ago much of the country was a jungle, now it is almost all a garden. Much of this improvement is doubtless owing to irrigation. But I am satisfied that it is due in a great measure to the settlement.

"As to the Bill, I will now say little, as the meetings of the Select Committee will afford better opportunity for discussing its provisions, and for modifying or adding to them if necessary. But my understanding is clearly that the Oudh Rent Bill and the Bill now before the Council, have been brought forward, not only with the consent of the Taluqdárs, so far as the main principles are concerned, but by their express desire. These Bills will not only define the rights of the Taluqdárs under the sanads granted them by Government, but relieve them from the embarrassing questions which might continually arise in respect of the rights and privileges to be enjoyed by other classes in Oudh. But I agree with Sir H. Durand that there should be no room left for doubt regarding the views of the Taluqdárs themselves in respect of all the provisions of the Bill; and I also think that the more the Bill can be made to agree with their wishes, the better; provided, of course, that this can be done without infringing the engagements entered into by the Government, or the rights of other parties.

"I highly approve of the clause giving every Taluqdár power to revert to the Hindú or Muhammadan law of succession, as the case may be, or to the ancient custom of his family It seems to me a great evil that the rule of primogeniture should be introduced where it never existed before. The rule is all very well in great historical estates which had devolved for many generations upon a single heir. But when you come to small taluqas, aggregates formed in modern times by individuals representing no great clans or interests, considerable difficulty will, I fear, be caused by its introduction. For the former sharers in undivided estates which were comprised in the sanads, and which will come under the operation of the proposed Act, will often be deprived of all interest in the estate, save the mere right of maintenance. This will often, I fear, cause great injustice; but I will not now dwell upon it."

His Excellency THE COMMANDER-IN-CHIEF said that his Hon'ble and gallant friend Sir Henry Durand had adverted to what might have been the original intention of the late lamented Governor General, Lord Canning, with respect to the inauguration of a policy in Oudh in 1857, and he had referred to certain matters of fact as affecting the campaign of the latter year in support of his opinion.

His Excellency did not propose to trouble the Council at this stage with any remarks on the principle or details of the Bill now before them. But, owing to circumstances, he was in a position to contribute certain details which might serve to throw doubt on the views of his Hon'ble and gallant friend. It would be admitted that Lord Canning's original opinions or intentions could have little effect on present legislation. That must be guided rather by the exact meaning and legal bearing of the sanads, the confirmation of the object of which was apparently the end pursued by the Bill under consideration. But it is certainly a matter of interest, and perhaps historical importance, to trace the course of Lord Canning's mind at the time referred to by Sir Henry Durand, and to show that what was ultimately done was not the result of a preconceived policy.

It would be in the recollection of the Council that the late Lord Clyde assembled his forces in February of 1858, for the prosecution of the siege of Lucknow. In the course of that month Lord Clyde proceeded to Allahabad to hold a conference with the Governor General on the policy to be pursued. Sir William Mansfield, as Chief of the Staff in India, was desired to attend his Lordship to take a share in the conference. They arrived at Allahabad towards the end of February 1858, and were immediately summoned to Lord Canning's presence. A long and anxious conference took place, extending over many hours. It was Lord Clyde's most earnest wish that a proclamation should be issued, assuring to the Taluqdárs the enjoyment of the rights of which they had been deprived by the proceedings of 1856, to which allusion had been made by the Hon'ble Mr. Strachey and his Excellency the Viceroy. It was urged that such a proclamation might now safely be issued, for the crisis of the war had passed. The glory and prestige of our arms had been restored in every direction. The course proposed could not now be attributed to fear, but merely to the desire for conciliation and justice as a consequence of our progress in putting down the rebellion. It was declared that such a proclamation would be the proper advanced guard of the Army. When the Commander-in-Chief and the Chief of the Staff quitted the Governor General's presence, they went away with the strongest impression that their views had been favourably entertained by Lord Canning. Lord Clyde could not conceal his exultation at feeling that he had carried his point; for he conceived that much blood would be saved in his Army—a consideration which was never absent from his thoughts—and further that the population would be spared, in the midst of which he was about to operate.

It will not have been forgotten that Lord Clyde was detained for many days at Cawnpore by the slowness of Jung Bahádur's advance. At length

when Jung Bahâdur reached the margin of the operations, Lord Clyde moved on Lucknow.

In the meantime the promised proclamation had not come from Lord Canning. His Excellency well recollected the disappointment of his late and very dear friend, Lord Clyde, on this account. The siege proceeded. Lucknow fell. The Military Secretary of the Governor General then appeared in Lord Clyde's camp with the proclamation of confiscation, which was exactly in the contrary sense to that expected by Lord Clyde

But further, it was well known that the late Sir James Outram, at that time Chief Commissioner in Oudh, was in immediate correspondence with the Governor General On receiving the proclamation, Sir James' disappointment and astonishment were similar to the feelings of the Commander-in-Chief. Such was the perturbation of his mind that he came to the Chief of the Staff' tent' and consulted him on the subject.

Sir James Outram, after discussing the policy, actually went the length of asking him for advice as to whether he should set aside the proclamation pending further orders. It would be understood by the Council that the Chief of the Staff was precluded from offering the slightest hint or suggestion on such a point.' But all this served to shew that there could not have existed in the mind of Lord Canning that preconceived policy to which allusion had been made.

Very shortly afterwards, Sir James Outram was relieved by Sir Robert Montgomery in the office of the Chief Commissioner After the Rohilcund campaign, the head-quarters proceeded to Allahabad, where Lord Clyde was in daily and intimate communication with Lord Canning. Arrangements were then made for the final subjugation of Oudh, and it was determined that Lord Clyde should enter the province for that purpose at the beginning of November. All arrangements were made accordingly, and about the middle of October, Lord Clyde asked for instructions as to the policy to be pursued. His Hon'ble and gallant friend was quite correct in saying that, at that date, the forces at Lord Clyde's disposal were overwhelming, and that Oudh lay at the Commander-in-Chief's feet. The campaign was not one of fighting, but, with regard to the object in view, *viz*, thorough subjugation, it was a campaign of arrangement and disposition, and of the most strenuous marching With regard to the instructions for the Commander-in-Chief, the Governor General had done him (Sir William Mansfield) the honour of consulting him about them. His Excellency accordingly put in a paper recommending in general terms the policy which was then adopted towards the Taluqdárs

It was then evident, His Excellency conceived, that even at that late date, October 1858, the final conclusions of the Governor General could hardly be said to have had an actual existence. His Excellency, therefore, thought himself justified in assuming that there could not have been any preconceived policy on the part of Lord Canning such as he understood to have been alleged.

The Hon'ble Mr. Strachey said:—"I wish, Sir, to add only a few words upon some of the points to which the Hon'ble Sir Henry Durand has referred. He has called in question the accuracy of my assertion that the real author of the policy that was followed in Oudh in 1858 was Sir Robert Montgomery, and he appears to consider that Lord Canning had determined upon the policy that he intended to adopt before Sir Robert Montgomery became Chief Commissioner. I think, Sir, that the valuable historical facts which have been just stated by His Excellency the Commander-in-Chief remove all doubt upon this subject; but, so far as the questions now under discussion are concerned, it does not much matter whether this policy originated with Sir Robert Montgomery, or with Sir James Outram, or with Lord Canning himself. The point which I wished to establish was this, that the policy carried out under Lord Canning's orders in 1858 was totally different in its nature from the policy which was afterwards adopted, and which I may call the policy of the sanads. I do not think that Sir Henry Durand has said anything which throws doubt upon the accuracy of this conclusion. These two policies seem to me to have been contradictory and irreconcilable. The first policy was adopted under circumstances of great political urgency, with the special object of hastening the pacification of Oudh. Against that policy I do not say a word. Although there are parts of it that I think unfortunate, the time has passed in which any practical advantage can be gained by discussing it. It is my belief that this policy really involved no injustice that might not easily have been corrected. The policy of the sanads was totally different, and I have maintained that some of the results which have followed from this second policy, and which are not only unjust but irrational, were clearly never contemplated by Lord Canning. The Hon'ble Sir Henry Durand has insisted upon the necessity which existed for granting sanads to the Taluqdárs, and he has referred to the strong recommendations to this effect which were made in 1859 by Colonel Barrow. Now, I quite agree in the opinion that it was right to confirm in a formal and unmistakeable manner the engagements into which our Government had entered; and if the sanads had done no more than this, no difficulties would have arisen. What I have regretted is that, in consequence of the form in which these sanads were drawn up, consequences have followed which it is quite certain were never contemplated by Lord Canning. I cannot speak of

the opinions of Colonel Barrow, to whom Sir Henry Durand has referred, and for whom I feel the highest regard and respect, because I am not aware that there is anything on official record to show what Colonel Barrow thinks regarding this particular question. There is hardly any one living who could speak upon these subjects with so much authority as Colonel Barrow, because it was almost entirely through him that Sir Robert Montgomery acted in his dealings with the Taluqdárs, and it was Colonel Barrow who superintended the settlement-operations of 1858-59. Although I have no authority to speak for Colonel Barrow in this matter, I cannot help saying that I think that he would confirm the opinion that I have given regarding the great and essential difference between the policy which he carried out in 1858, and that which afterwards grew up out of the sanads.

"The Hon'ble Sir Henry Durand seemed to me to speak as if he were defending the policy of the late Lord Canning in Oudh, and as if I had been assailing that policy. Now, Sir, I wish to disclaim, in the strongest manner possible, the supposition that I have ever assailed the policy of Lord Canning. Ever since I became Chief Commissioner of Oudh, I have invariably declared it to be my duty and my determination to carry out that policy honestly and completely. But I have declared that some of the results that have followed from the measures which were adopted by Lord Canning are not only no proper part of his policy, but are altogether opposed to that strong feeling of justice by which Lord Canning was at all times actuated. In saying that remedies ought to be found for needless and unintentional blots upon Lord Canning's policy, I think that I act, not as the assailant of that policy, but as its supporter. And in this view I believe, as I before stated, that I have done nothing more than carry out the policy which has been that of your Excellency's Government.

"I need hardly add anything to the remarks which your Excellency has made regarding the circumstances under which this Bill has been introduced. Although I have no authority to say that the Taluqdárs will approve of all its details, the introduction of a Bill of this character has long been a measure which they have anxiously desired, for they have felt how necessary it is that the exact nature of the position which they hold should be distinctly defined by law. The Hon'ble Sir Henry Durand is, I think, hardly right in supposing that the Bill introduced by Lord Canning in 1862 was altogether approved by the Taluqdárs. In some very important respects, to which I have already alluded, that Bill was disapproved by many of the Taluqdárs and by Sir Charles Wingfield. I think that it will be found that, in essential respects, the present Bill is, to say the least, as acceptable to the Taluqdárs as that of 1862.

"Sir, there is only one other point to which I wish to refer. In the remarks which I made when I obtained leave to introduce this Bill, I made use hastily of a somewhat unfortunate expression. I said that Sir Charles Wingfield had his share of what I called the superstitious reverence which Englishmen very often have for institutions of a purely English type. I regret that I said anything of the sort, because I see from the impression which my words have left upon the mind of my Hon'ble and gallant friend, that I may seem to have been wanting in respect to Sir Charles Wingfield. But, Sir, I hope that if these words are remembered, the rest of my remarks regarding Sir Charles Wingfield may be remembered too. I declared my belief—and no one has had better opportunities than I have had of judging—that the general excellence of his administration was such that comparison might be challenged with the administration of any province in India. I desire to repeat this belief, and I agree with the Hon'ble Sir Henry Durand in thinking that it adds greatly to the honour with which Sir Charles Wingfield's name deserves to be mentioned, that he fearlessly and openly declared at all times the views which he believed it to be his duty to maintain, regardless of the fact that his views were not always those which were acceptable to the Government."

The Hon'ble MAJOR-GENERAL SIR H. M. DURAND said:—"Sir, with your permission I shall add a few words with reference to what has fallen from the Hon'ble and gallant Member, the Commander-in-Chief. I have only to observe that, in all that His Excellency has stated, there is nothing in any way inconsistent with my own remarks, for throughout I never said a word on the confiscation proclamation, which, as an intervenient *modus operandi*, had nothing to do with the subject to which I confined my observations, namely, the reversal of the Oudh administrative policy of Lord Dalhousie based on the North-West Province system, the substitution of the taluqdárí system, and the grant of sanads as a component part of that system, and one quite independent of the question of a taluqdárí title being based or not on preliminary confiscation. I did not to the best of my recollection utter a word on the subject of the confiscation proclamation."

The Motion was put and agreed to.

FINANCIAL AND JUDICIAL COMMISSIONERS' (OUDH) BILL.

The Hon'ble MR. STRACHEY introduced the Bill to enable appeals to be transferred from the Court of the Financial Commissioner of Oudh to the Court of the Judicial Commissioner of that Province, and for other purposes, and moved that it be referred to a Select Committee with instructions to report in six

weeks. He explained that the Court of the Financial Commissioner was the final Court of appeal in suits involving rights to land. In consequence of the progress of the settlement of the land-revenue, the Financial Commissioner was often oppressed with appellate business, much of which might be disposed of by the Judicial Commissioner; and the Bill accordingly provided for the transfer of appeals from the Court of the Financial to that of the Judicial Commissioner. The Bill also empowered these Commissioners to sit together for the hearing of cases of special difficulty, and thus to constitute a sort of High Court for Oudh. In case, however, of difference of opinion, a reference would be made to the High Court of the North-Western Provinces.

The Hon'ble MR. MAINE said that, as there were not now any Bills in the Legislative Department of a kind proper to be passed at Simla, and as his Hon'ble friend, Mr. Strachey, was on the point of returning to Lucknow to consult the Taluqdárs, which would have the effect of postponing the Oudh Bills for a time, he (MR. MAINE) suggested that the Council should adjourn *sine die*. The effect would be to revive the Governor General's power of publishing Bills for the information of the country, which was suspended during any regular sittings of the Council. The Home Secretary would doubtless remember that, when any further sittings had to take place, fresh summonses must be issued.

The Motion was put and agreed to.

The following Select Committees were named:—

On the Bill to define the rights of Taluqdárs and others in certain estates in Oudh, and to regulate succession thereto, the Hon'ble Messrs. Maine and Taylor, Sir H. M. Durand, Sir George Yule, and the mover.

On the Bill to enable appeals to be transferred from the Court of the Financial Commissioner of Oudh to the Court of the Judicial Commissioner of that Province, and for other purposes, the Hon'ble Mr. Maine and the mover.

The Council then adjourned *sine die*.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 31st July 1867.

Office Supdt. Govt. Printing,—No. 3013 L. C.—12-9-67.—200.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 4th September 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble H. Sumner Maine.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble Sir George Yule, C. B., K. C. S. I.

ADDITIONAL FINANCIAL COMMISSIONERS' (PANJÁB) BILL.

The Hon'ble MR. MAINE introduced the Bill to provide temporary assistance to the Financial Commissioner of the Panjáb. He said that, as the Bill had been published in the *Gazette* under Rule 19, it was unnecessary to ask for leave to introduce it. His Excellency the President was aware of the circumstances which had led to the preparation of the Bill. A vast amount of arrears had accumulated in the Court of the Financial Commissioner of the Panjáb, during more incumbencies than one of that office, and it was highly expedient to give the present Commissioner some temporary assistance in clearing off those arrears. The Financial Commissionership had been constituted under an old rule which had now gained the force of law; but the principle which prevailed in the Panjáb and other Non-Regulation Provinces was that several functions should be accumulated on a single individual, rather than that several persons should exercise the same functions; hence there was no power to appoint an assistant or a deputy to the Financial Commissioner. Thus arose the necessity for the present Bill; and as the power of subordinate legislation, which the Non-Regulation Provinces once practically enjoyed, had been taken away by the Indian Councils' Act, the Bill had to be passed by the Council of the Governor General—a good illustration of the trifling character of much of its present business.

The Hon'ble MR. MAINE having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The PRESIDENT declared the Rules suspended.

The Hon'ble MR. MAINE then moved that the Bill be taken into consideration

The Motion was put and agreed to.

The Hon'ble MR. MAINE then moved that the first blank in the Section prescribing the continuance of the proposed Act be filled up with the date—first day of October 1867;—and that the second and third blanks should be each filled up with the date—first day of April 1868.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then moved that the Bill as amended be passed.

The Motion was put and agreed to.

HEADS OF VILLAGES' (MADRAS) BILL.

The Hon'ble MR. MAINE introduced the Bill to correct an error in Act No. XVII of 1862, An Act to repeal certain Regulations and Acts relating to criminal law and procedure. He said that the first clause of Section XI of the Madras Regulation XI of 1816 conferred the power of search on heads of villages, where they had reason to believe stolen property was concealed and likely to be made away with. This clause was repealed by Act No. XXIV of 1859, but the loss of the power was found so inconvenient, that the Madras Government applied to have it restored. This was done, or rather intended to be done, by an Act passed before His Excellency or any Member of the present Council acceded to office, No. XVII of 1862—a measure framed to repeal a vast mass of Acts and Regulations which had been rendered obsolete by the Penal Code and the Code of Criminal Procedure. The Schedule to Act XVII expressly repealed so much of Act XXIV of 1859 as repealed clause 1, Section XI of Regulation XI of 1816. The effect of this would of course have been to revive, as was intended, the clause in question; but unfortunately a misprint in a subsequent part of the same Schedule—the numeral XII being erroneously substituted for XI Clause 1—had the effect of again depriving the heads of villages of the useful power to which he (MR. MAINE) had referred. The Bill

had been prepared at the instance of the Government of Madras, and he trusted that His Excellency the President would consent to suspend the Rules for the Conduct of Business in order that it might at once be passed.

The PRESIDENT declared the Rules suspended.

The Hon'ble MR. MAINE then moved that the Bill be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then moved that the Bill be passed.

The Motion was put and agreed to.

The Council then adjourned *sine die*.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (*Legislative*).

SIMLA,
The 4th September 1867.

Office Supdt Govt. Printing —No. 4363 L C.—21-10-67—150.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 2nd October 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble Sir George Yule, C. B., K. C. S. I.
The Hon'ble John Strachey.

FINANCIAL AND JUDICIAL COMMISSIONERS' (OUDH) BILL.

The Hon'ble MR. STRACHEY presented the Report of the Select Committee on the Bill to enable appeals to be transferred from the Court of the Financial Commissioner of Oudh to the Court of the Judicial Commissioner of that Province, and for other purposes.

The Hon'ble MR. STRACHEY having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The PRESIDENT declared the Rules suspended.

The Hon'ble MR. STRACHEY then moved that the Report be taken into consideration. He had already explained that the Bill had three objects,—first, to relieve the Financial Commissioner of Oudh from much of the appellate business before him, which might well be disposed of by the Judicial Commissioner; secondly, to create a kind of Chief Court, composed of the two Commissioners, for the disposal of civil and revenue cases of peculiar difficulty; and, thirdly, to enable the Judicial Commissioner to obtain the assistance of the Financial Commissioner in deciding points arising in important criminal cases. Provision was made for a reference to the High Court of the North Western Provinces, in case of difference of opinion. Only two substantial changes had been made by the Committee to which the Bill had been referred. It had added to the cases in which the Judicial Commissioner might request the Financial Commissioner to sit with him, those which would come before

the former as a Court of Revision under Chapter XXIX of the Code of Criminal Procedure; and in the proviso to Section 9, it had omitted the words "or of imprisonment." The reference to the High Court in criminal cases would then be obligatory only when the difference of opinion between the Commissioners involved the confirmation, commutation, or reversal of a sentence of death or of transportation.

The Bill had been generally approved by the authorities to whom it had been submitted, and would, he felt assured, give greater confidence in the administration of justice in Oudh.

The Motion was put and agreed to.

The Hon'ble MR. STRACHEY then moved that the Bill be passed.

The Motion was put and agreed to.

OUDH RENT BILL.

The Hon'ble MR. STRACHEY presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to the recovery of rent in Oudh, and said that, as some important alterations had been made in the Bill, it was desirable that it should be re-published in the *Gazette* along with the Report now presented.

The Council then adjourned.

SIMLA,
The 2nd October 1867.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (*Legislative*).

Office Supdt. Govt. Printing.—No. 4330 L. C.—22-10-67.—180.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 22nd November 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant Governor of Bengal.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble C. P. Hobhouse.
The Hon'ble J. Skinner.
The Hon'ble Stewart Gladstone.

The Hon'ble MR. GLADSTONE took the oath of allegiance, and the oath that he would faithfully discharge the duties of his office.

GENERAL CLAUSES' BILL.

The Right Hon'ble MR. MASSEY introduced the Bill for shortening the language used in Acts of the Governor General of India in Council and for other purposes, and moved that it be referred to a Select Committee with instructions to report in a month. He said that the verbosity and tautology to be found in the language of Acts of Parliament had long been the subject of complaint, but it was only within the last few years that an effort had been made to remove that reproach to British legislation. That object had to some extent been effected by the Statute of 7 Wm. IV. & 1 Vic., c. 39, followed by the Statute of the 13th & 14th years of Her present Majesty, cap. 21, which were passed to shorten the language of statutory enactments. The Government of India would have earlier followed the example of Parliament, had they not been under the impression that it was the intention of the Indian Law Commissioners to send out a series of clauses framed on the model of the provisions of the Statutes to which he had referred. This, however, had not been done, and it was therefore considered expedient to follow the example which had already been set by the Councils of the Governor of Madras and the Lieutenant Governor of Bengal. The provisions of the Bill were strictly confined to the objects specified in the Statement which had been published with the Bill. Every one who had had occasion to consult the Acts of the Governor General in Council must have observed that all, or almost all, contained an interpretation clause, comprising

a variety of definitions which were generally matters of mere routine, such as that "words in the singular number shall include the plural" and "the masculine gender shall include the feminine:" also definitions of "moveable" and "immoveable property," 'person,' 'year,' 'month,' 'High Court,' 'British India,' and so forth. It was now proposed to do away with the necessity of inserting such provisions in subsequent Acts, and the Bill accordingly defined once for all the words and expressions which he had mentioned, and declared that, in all Acts made by the Governor General in Council, after it should have come into operation, these words and expressions should bear the meanings attached to them respectively by the Bill.

There was another provision in the Bill which was of some importance. It sometimes happened that, when a law was repealed, and subsequent circumstances rendered it necessary to repeal the repealing law, perplexing questions occurred as to whether or not the repealed law was revived. It was therefore proposed to get rid of such questions by simply enacting that, for the purpose of reviving, either wholly or partially, a Statute, Act or Regulation, it should be necessary expressly to state such purpose.

The other objects of the Bill were succinctly stated in the Statement of Objects and Reasons. The Bill contained rules as to commencement and termination of a series of days or any other period of time mentioned in an enactment, and would thus relieve future draftsmen from the necessity of using the expressions 'from and after' and 'down to and including:' it prescribed an uniform mode of recovering fines to be hereafter imposed: it directed (herein repeating the provision contained in the Statute 3 & 4 Wm. IV., c. 85, s. 45) that the Acts should be noticed judicially, and it declared that recitals contained in any Act should be deemed to be *primâ facie* evidence of the truth of the facts recited.

The Bill contained no provisions likely to give rise to any controversy: no honourable Member would, MR. MASSEY thought, feel the slightest hesitation as to a measure framed to shorten the Acts of the Governor General in Council, and to free them from tautologies and incumbrances, which were not only discreditable to the legislature, but which sometimes raised perplexing questions as to what was its real intention. An illustration of the probable utility of the Bill was afforded by an Act which the Council had to pass last session. He referred to Act XVI of 1867 (to authorize the making of acting appointments to certain judicial offices). This would have been unnecessary had there been any Act in force containing a provision like that made in the third Section of the Bill, "For the purpose of indicating the application of a law to every person or number of per-

sons for the time being executing the functions of an office, it shall be sufficient to mention the official title of the officer at present executing such functions, or that of the officer by whom the functions are commonly executed." That got rid of all questions as to the powers of Government to make acting appointments, and as to the position of persons acting for officers charged with the execution of certain duties. The Bill was a very simple one, and so guarded in its provisions that he did not apprehend that any substantial amendment would be suggested, but he proposed to take the usual course of referring it to a Select Committee. He hoped to have the assistance of the Hon'ble Mr. Hobhouse in examining the provisions of the Bill, and he trusted the result would be a safe and practical measure.

The Motion was put and agreed to.

INDIAN RAILWAY ACT AMENDMENT BILL.

The Hon'ble MR. TAYLOR moved that the Select Committee on the Bill to amend Act No. XVIII of 1854 (relating to Railways in India) be re-constituted, and that His Honour the Lieutenant Governor, the Right Hon'ble Mr. Massey and the Hon'ble Mr. Skinner be added thereto.

The Motion was put and agreed to.

REPEAL OF OBSOLETE ENACTMENTS' BILL.

The Hon'ble MR. HOBHOUSE introduced the Bill for repealing certain enactments which have ceased to be in force or have become unnecessary, and moved that it be referred to a Select Committee with instructions to report in six weeks. He said that this Bill, which had already appeared in the *Gazette of India*, was very short, although the enactments which it proposed to repeal were numerous. There was a large number of Regulations and Acts in the Statute Book which had not been expressly repealed, but which were no longer in force. Some, for instance, were simply temporary Acts, but their repeal was expedient to preclude doubts as to whether or not they had been, like the Arms' Act, continued or revived; others had become obsolete from various causes; and had therefore (to quote the Statement of Objects and Reasons) merely an historical interest; and others had been repealed by implication, but it was of course desirable to repeal expressly this class of enactments. Others again simply repealed prior enactments, and the reason for repealing this class was merely to relieve the Statute Book. The object of the Bill was to repeal expressly, once for all, every enactment which was now no longer of any practical utility. The Bill had been confined for the most part to the Acts of the Government of India, and did not, as a rule, affect the older Regulations, because, in the case of

the North-Western Provinces, it was understood, when the Bill was framed, that they were being codified by a Member of the local Board of Revenue, and in the case of the Lower Provinces, Madras and Bombay, it was thought that the local legislatures would most fitly discharge the duty of repealing their obsolete Regulations. He had only to add that the Bill was modelled on 30° & 31° of Victoria, cap. 59 (the last of the three Acts passed for promoting the revision of the English Statute law), and that it might be regarded as clearing the way for the fulfilment of the mandate given by Parliament as far back as the 37th year of Geo. III, to form into a regular code all laws made by the Governor General in Council. The Select Committee on the Bill would go most carefully through the different Acts proposed to be repealed, to see that they were no longer in force; and when they were got rid of, he felt assured that all entrusted with the administration of the law, or otherwise interested in ascertaining what the written law really was, would be very much helped by being relieved of so many useless enactments.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill for shortening the language used in Acts of the Governor General of India in Council and for other purposes—The Hon'ble Mr. Hobhouse and the Mover.

On the Bill to amend Act No. XVIII of 1854 (relating to Railways in India)—His Honour the Lieutenant Governor, the Hon'ble Mr. Maine, the Right Hon'ble Mr. Massey, the Hon'ble Major General Sir H. M. Durand, the Hon'ble Mr. Skinner and the Mover.

On the Bill for repealing certain enactments which have ceased to be in force or have become unnecessary—The Right Hon'ble Mr. Massey, and the Hon'ble Messrs. Brandreth, Shaw Stewart and the Mover.

The Council adjourned till the 29th November 1867

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

CALCUTTA,
The 22nd November 1867.

Office Supdt Govt Printing —No 5064 L. C.—23-11 67 —100.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 29th November 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant Governor of Bengal.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble E. L. Brandreth.
The Hon'ble C. P. Hobhouse.
The Hon'ble J. Skinner.
The Hon'ble Stewart Gladstone.

PRINCIPAL SADR AMÍNS, SADR AMÍNS AND MUNSIFS' BILL.

The Hon'ble MR. HOBHOUSE introduced the Bill to consolidate and amend the law relating to Principal Sadr Amíns, Sadr Amíns and Munsifs, and for other purposes, and moved that it be referred to a Select Committee with instructions to report in six weeks. The primary object of the Bill was simply to increase the jurisdiction of the Civil Courts in Lower Bengal and the North-Western Provinces, which were presided over by Munsifs; but when he came to consider the different Regulations and Acts which bore on the subject of those Courts, it seemed advisable to consolidate the whole law on the subject of the Courts subordinate to the High Courts and to the District Judges, that was, the Courts of the Principal Sadr Amíns, Sadr Amíns and Munsifs. This law was to be found in the provisions of a great many Regulations and Acts scattered over the Indian Statute Book. He would explain shortly what jurisdiction was now exercised by the Courts in question, and then state the alterations proposed. In Lower Bengal, and, he believed, in the North-Western Provinces also, there were in each sadr station the Courts of the Principal Sadr Amín, Sadr Amín and Munsif subordinate to the District Judge; but in most stations in Lower Bengal, the Courts of the Sadr Amín and Munsif had been for some time placed in charge of one person—an officer who exercised the jurisdiction as well of a Sadr Amín as of a Munsif. Besides those Courts in the sadr stations, there were Munsifs' Courts

in sub-divisions, which were situated at a distance of from 30 to 60, and even 100 miles in some cases, from the sadr station. The jurisdiction exercised by those Courts was this. A Munsif had jurisdiction to try suits of every description where the property was of a value not exceeding 300 rupees; the Sadr Amin had jurisdiction to try suits the value of which was between 300 and 1,000 rupees; and the Principal Sadr Amín to try suits above 1,000 rupees and up to any amount in value. It resulted, therefore, that any person resident at some long distance, perhaps 50 or 60 miles from the sadr station, having to institute a suit of a value above 300 rupees, would have to go into the sadr station, always at great expense and trouble. It was therefore obvious that, if the Courts could be brought nearer to the people, there would be a great advantage.

There were, he thought, sufficient reasons why the jurisdiction of the Munsifs should be increased. One reason was that, under the Stamp Act passed last year, the Council had to a certain extent taken away from the jurisdiction of Munsifs. That referred only to suits for immoveable property; but those suits were, without exception, the most difficult suits to try. He would explain how the Stamp Act had operated in reducing jurisdiction. In suits for land, the way to arrive at the value of the suit was this. Under the old law, you took the revenue paid to Government and multiplied it by 3, and the product was held to be the value of the suit; for instance, where the revenue paid to Government for the land was 100 rupees, the value of the suit was taken to be 300 rupees, and that gave jurisdiction to the Munsif. But now, under the new Stamp Act, to arrive at the value of a suit for land, the revenue paid to Government was multiplied by 10, so that, in the case supposed, where the revenue was 100 rupees, the value of the suit would be assumed to be 1,000 rupees, and thus the jurisdiction of the Munsif would be taken away, and the suit instituted before the Sadr Amín. That, Mr. Hobhouse thought, was one reason why the Council were bound to some extent to increase the jurisdiction of the Munsif. Another reason, as stated before, was the convenience of suitors. In the sister presidencies of Bombay and Madras, Munsifs had for some time had jurisdiction equal to, and in one respect greater than, that proposed to be given. It was, however, better to have no Court at all than a bad one, and if the Munsifs were not competent to exercise jurisdiction up to 1,000 rupees, it would be wrong to give them such jurisdiction; but on that point the Council had the volunteered opinion of the Judges of both the High Courts of Bengal and the North-Western Provinces, who said that they thought the Munsifs competent to exercise jurisdiction up to 1,000 rupees.

Then, of course, if the jurisdiction of the Munsifs were raised, the Council would be obliged at the same time to raise the jurisdiction of the Sadr Amíns. While, therefore, it was proposed to raise the jurisdiction of Munsifs to 1,000 rupees, it was also proposed to raise the jurisdiction of Sadr Amíns and Principal Sadr Amíns, so that Sadr Amíns should try suits between 1,000 and 3,000 rupees, and Principal Sadr Amíns suits of any amount above 3,000 rupees. Although that provision with regard to Sadr Amíns was first suggested by himself, he had since seen reason to suppose that it would not act, because, from certain returns which had reached him, it appeared that, if the jurisdiction of Sadr Amíns was to be confined to those suits, the Sadr Amín would have but little jurisdiction at all, as the number of suits of that value was very small. It now seemed to him better to follow the suggestion of the High Court of Bengal, and do away with the office of Sadr Amín, and with the name of Principal Sadr Amín, and introduce instead a person who would really be Principal Sadr Amín with another name, perhaps that of Subordinate Judge, with jurisdiction to any extent above 1,000 rupees, the same in fact as Principal Sadr Amíns now exercised.

He had now stated the primary object of the Bill, and would proceed shortly to notice its principal provisions. The Bill was, generally speaking, a Bill for consolidation, but in consolidating, one or two new provisions had been introduced. The first of these was in Section 4 of Part II. Under it, the Local Governments were given power to appoint, as they might think fit, proper persons to be Principal Sadr Amíns, Sadr Amíns *and Munsifs*, to hold office during the pleasure of Government. That was an alteration of the law as it at present existed, and as it had stood for some time, but one which he thought it proper to make ; at the same time it was open to and deserving of the discussion which it would no doubt receive in Select Committee. When a vacancy occurred in the office of Munsif, the District Judge reported the case to the High Court, whether it were in Lower Bengal or the North-Western Provinces, and the High Court appointed a person to the office of Munsif; but that was not the procedure in the case of Sadr Amíns and Principal Sadr Amíns. When a vacancy occurred in either of those offices, under a provision some time in force, the Local Government had authority to appoint, but in practice it requested the High Court to nominate such person as the Court thought fit, and that nomination was generally accepted. There was good reason why the High Court should be called on to nominate a person to the office of Sadr Amín or Principal Sadr Amín, because those offices were held by officers who had served in the subordinate grade of Munsif, and the persons most competent to judge of the qualifications of those officers were the Judges of the Courts who had seen the work of those officers as Munsifs. But the case was different with respect to the appointment

to Munsifships. The High Court had, in his judgment, very little opportunity of knowing who were fit persons to be appointed Munsifs. If Munsifs were ordinarily selected from the pleaders or officers of that Court, then the Judges of the Court would best decide on the competency of the person to be appointed. But that was not the case. Munsifs were generally selected out of the district where they were to be appointed, or from the different colleges, and, therefore, the persons who were best able to judge were the local officers, and not the Judges of the High Court. The Local Governments had under their immediate control, in their executive capacity, Commissioners, Judges, Collectors, officers of the Educational Department, and a number of executive officers all over the country, who were much more likely to be able to select fit persons than the Judges of the High Court from any knowledge they could have. In his judgment, it was not advisable to place, in any of the judicial body, any power which did not belong to their judicial functions, and speaking from his own experience as a District Judge, he thought the more Judges were relieved of executive, and confined to the execution of judicial, work, the better they would be able to discharge their proper functions. As a District Judge, he would have been glad to be relieved of a number of executive duties which he was obliged to perform. That was his opinion, but the provision to which he referred would no doubt have thorough sifting at the hands of the Select Committee. If that provision were retained in its integrity, when a vacancy in the office of Munsif occurred, the Judge of the district would appoint a person temporarily to conduct the duties of the office: that would be necessary, for otherwise, great difficulties would occur by the work falling in arrear. The Judge would then be called on to state the qualifications of the person he had nominated, and it would rest with the Local Government to make the permanent appointment.

Part III related to the suspension and removal of Principal Sadr Amins, Sadr Amins and Munsifs. All that had been done in that Part was to re-introduce, adapting them to the Code of Criminal Procedure, the provisions of Act XXVII of 1850, Regulation XXIII of 1814, and other Regulations; but it had occurred to him, and also to other gentlemen who had taken the trouble to write on the subject, that possibly the shortest way to investigate the conduct of officers of the Civil Courts was by directing prosecutions to be carried on at the instance of the High Court; because the Judges of the High Courts were the only persons besides the District Judges who could properly determine whether a prosecution was necessary, and in what form it should be conducted.

The object of Section 29 of Part IV was to give the Local Government power, whenever it might think fit, to invest Principal Sadr Amins

with the powers of Judges of Small Cause Courts. Under the law relating to the Courts of Small Causes in the Mofussil as it at present stood, the Local Government could appoint any person to exercise the powers of a Judge of a Small Cause Court, but then that was only for a time; the power must be limited and specific, and could only be conferred on certain Courts. There was also, in Act XI of 1865, a provision by which a Judge of a Small Cause Court might be invested with the powers of a Principal Sadr Amín: the converse of that was now proposed, where the business was not sufficient to employ the whole time of a Principal Sadr Amín. Section 29 empowered the Local Government to invest a Principal Sadr Amín with the powers of a Small Cause Court Judge. He himself should be inclined to carry the Section further, and give the Local Government power to invest any officer mentioned in the Bill, whether a Munsif or Principal Sadr Amín, with the powers of a Small Cause Court Judge, stating at the same time to what extent the power was to be exercised. The present limit of jurisdiction of a Small Cause Court Judge was in suits up to 500 rupees in value; but in many cases, the Local Government might with great advantage invest Munsifs at long distances from the sadr station with the powers of a Small Cause Court Judge with jurisdiction to a limited extent. For instance, embankments and works of irrigation were being carried on all over the country, and labourers with very small wages were employed on them: it would be of great advantage to such labourers, if, in places where they were working, competent persons (supposing, of course, that Munsifs were competent) were empowered to try cases of small amount, say up to 100 rupees in value. At any rate it seemed wise to enact that Local Governments should have power to appoint Munsifs in such cases to try cases of small amount without appeal: it would be a great relief to labourers if such powers were given to Munsifs, for it would prevent their being dragged up in appeal to the higher Courts, and if any money was due to them they would get it at once.

The only other provision he would notice was Section 32, by which it was proposed to raise the appellate power of District Judges from 5,000 to 10,000 rupees. There were much the same reasons for making this alteration in the law as there were for making an alteration in the jurisdiction of Munsifs. The late Stamp Act had, in the manner he had already explained in the case of Munsifs, taken away a great deal of the jurisdiction of District Judges in matters of immoveable property. That was one reason why it might be desirable to restore to District Judges that part of their appellate jurisdiction of which the Stamp Act had deprived them. There was also another reason

which had, he thought, some force. According to the law as it at present stood, when a suit was for 5,000 rupees, it might go through a triple process: first as an original suit before the Principal Sadr Amín, then to the District Judge in what was called regular appeal, and then to the High Court in what was called a special appeal. But in regard to suits between 5,000 and 10,000 rupees there was no such procedure. If the suit was one of 5,000 rupees, it was tried as an original suit either by the District Judge or Principal Sadr Amín; it then went to the High Court in regular appeal, and there was then no further appeal. But in suits for 10,000 rupees (if the District Judges had power to try such suits in appeal) the case might first be tried by the Principal Sadr Amín, then go in regular appeal to the District Judge, and in special appeal to the High Court, and further in appeal to the Privy Council. He did not quite see that full force in this reason, which others he had consulted ascribed to it, but he thought there was a certain amount of reason in it, namely, that it put all suits of 5,000 or 10,000 rupees on the same footing in regard to special appeal. There was no other provision in the Bill which it was necessary at that stage specially to notice.

The Motion was put and agreed to.

TENANCY OF LAND (PANJÁB) BILL.

The Hon'ble MR. BRANDRETH, in moving for leave to introduce a Bill to define and amend the law relating to the tenancy of land in the Panjáb, said that his object in proposing the Bill was to extend to the Panjáb the provisions of Act X of 1859 (to amend the law relating to the recovery of rent), of Act XIV of 1863 (to amend Act X of 1859), and of the Oudh Rent Bill,—a Bill which had recently been introduced in this Council,—with such modifications, omissions and additions, as the different circumstances of the Panjáb, or as the different conclusions drawn from the experience gained in the Panjáb, appeared to require.

One of the principal modifications which he wished to propose would be that, whereas by Act X of 1859 the tenant acquired a right of occupancy after cultivating his land for twelve years, he (MR. BRANDRETH) would only allow a presumption of such a right to be raised in the tenant's favour after he had held his land for a given period,—a presumption which might be rebutted, and the title based thereon by the tenant set aside, if (to take for instance one of the grounds he wished to recognize) the landowner was able to show that other tenants of the same class and holding under similar circumstances in the

neighbourhood had commonly been ejected from their holdings. Another modification would be as regarded the fixing of rates of rent. The Oudh Bill allowed the rent claimable from all tenants having a right of occupancy to be enhanced to within 12 ½ per cent. of the rent paid by tenants-at-will; but there were so many different classes of hereditary tenants in the Panjáb—many tenants differed so little from proprietors—that some distinctions, besides those adopted for Oudh, as regarded rates of rent, would have to be drawn, and also a wider discretion left to the Revenue Courts in dealing with the claims of landowners to the enhancement of rent. Most of the provisions which he proposed introducing into the Bill, had been either approved or suggested by a Committee which had assembled at Lahore a few days ago by order of the Lieutenant Governor to consider the question of tenant-right in the Panjáb. It seemed unnecessary, however, at this time to go into the details of the proposed Bill, as this was not an occasion which, he believed, by the Rules of the Council, would admit of their being discussed, and though even some of the details should hereafter be objected to, yet the general principle of the Bill, which he before stated, namely, that of extending the provisions of Rent Acts at present in force in other parts of the empire to the Panjáb, with such modifications as the different circumstances of the Panjáb required, was not likely, he imagined, to be opposed by the Council. With this expectation, therefore, and without going into details, which he should be so much better able to enter into when the Bill, if he was allowed to introduce it, was before the Council, he moved for leave to bring in the Bill.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to consolidate and amend the law relating to Principal Sadr Amíns, Sadr Amíns and Munsifs, and for other purposes—The Right Hon'ble Mr. Massey, the Hon'ble Mr. Brandreth and the mover.

The Council adjourned till the 6th December 1867.

CALCUTTA,
The 29th November 1867.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

Office Suptdt Govt Printing—No. 5230 L C.—3-12-67—180.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 6th December 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant Governor of Bengal.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble C. P. Hobhouse.
The Hon'ble J. Skinner.
The Hon'ble Stewart Gladstone.

INDIAN CONTRACT BILL.

The Right Hon'ble MR. MASSEY introduced the Bill to define and amend the law relating to Contracts, Sale of Moveables, Indemnity and Guarantee, Bailment, Agency and Partnership, and moved that it be referred to a Select Committee with instructions to report in three months. He said that, in the absence of his hon'ble and learned colleague Mr. Maine, the duty had devolved on him of laying this Bill before the Council. The subject had long been under the consideration of the Indian Law Commissioners, and the result of their labours was the Bill which he had now the honour to introduce. That Bill, with one important exception to which he should presently advert, and with a few verbal alterations and the addition of an Interpretation-clause and Schedules of Acts repealed or saved, was precisely in the state in which it had been sent by the Commissioners. It was a measure embodying the whole Law of Contract, and therefore of a most comprehensive character, inasmuch as matters relating to contract constituted a great mass of law, and involved questions which occupied the time of the Civil Courts to a greater extent than any other description of business. The subject was therefore of the first importance; and when it was considered that the Law of Contract had grown up in England mainly out of judicial decisions, and had been but little indebted to legislation, the responsibility which attached to the legislature in dealing with the subject was greatly enhanced. The Law of

Contract in its present state had been the product of many generations; it had adapted itself to the circumstances and exigencies of the times; it had grown with the growth of prosperity, and had been developed as new relations had arisen between man and man; and although a body of jurisprudence compiled in that way was in some degree encumbered by niceties and refinements, it was, on the whole, well adapted to the circumstances of the country and the dealings of the people. Although the Law of Contract was, as he had said, mainly composed of judicial decisions, its cornerstone had been laid by the legislature in an Act of Parliament which had been justly eulogised as one of the wisest enactments in the Statute Book: he meant of course the Statute of Frauds, which was passed in the reign of Charles the Second. That law was the work of the most eminent lawyers of the day,—men who for learning and great judicial capacity had never been surpassed. Every word of that Act had been carefully considered, and it had been described as an Act every word of which was worth a subsidy. Its provisions had been the subject of discussion and interpretation ever since it had been enacted, and the efforts of the Courts had been, not to narrow or depart from its provisions, but to expand and make them applicable to the circumstances of modern society. Before the enactment of the Statute of Frauds, questions relating to personal property were of little account. The feudal law as to the devolution and transfer of land was then in force, for it was only during the reign of Charles the Second that the old law of tenure by knight-service was finally abolished, and though the military tenures and their incidents had been destroyed some seventeen years before the passing of the Statute of Frauds, the spirit and influence of the system which had so long ruled the law of England was still prevalent. The Statute of Frauds was the first Act of the legislature which recognized in contracts relating to moveable property that importance which they had since acquired. But the provisions of that law were framed with regard to the circumstances of the time. At that period education had spread but little beyond the higher classes, and the severity of manners enforced during the Commonwealth had been followed by a reaction in the opposite extreme. This was a sufficient reason why any law relating to contracts should be strictly and rigorously defined. The Statute of Frauds was principally directed to the object of preventing frauds, and to the protection of persons entering into contracts from the effects of perjury. The provisions of the Statute first regulated matters connected with land. It provided that no interest in land, except a lease for less than three years, should have greater force than a lease or estate at will, unless it were in writing signed by the parties or their agents. Another provision was that no executor should be required to pay the debt of a testator out of his own estate, unless he had under

taken to do so in writing: a similar provision was that no person should be liable for the debt of another unless he had agreed in writing signed by himself or his agent to pay it. Every contract for sale of land was also to be evidenced by a written document. And with regard to contracts of a general character, it was enacted that no agreement not to be performed within one year was to be valid unless in writing. Such were the principal provisions of the Statute, which were considered necessary to prevent the institution of false claims supported by perjury. Times happily had very much altered since that period; education had extended to all classes of the people; the obligations of religion and morality were respected, and the reasons which induced the legislature to pass those stringent provisions had not the same force now. Considerable modifications had therefore been proposed by the Indian Law Commissioners in the Statute of Frauds in its application to this country. These would, no doubt, be the subject of discussion and consideration before the Bill was passed. It was stated by the Commissioners that many provisions of the Statute were now not of unquestionable expediency in England; but he believed that (except so far as they had been encroached upon by the Court of Chancery) those provisions still remained in full force. About eighty years after the enactment of the Statute of Frauds, a fortunate conjuncture placed at the head of the administration of the civil law one of the most accomplished Judges that ever adorned the Bench—a man who was endowed with a legal understanding of the highest order, and who, besides being a great jurist, was a statesman of the first class and an orator the rival of Chatham. He referred of course to Lord Mansfield who had at that period become Chief Justice of England. Commerce had then begun to develop itself, and a state of things arose for which no provision had been made by the legislature or by the decisions of the Courts of Justice. It was reserved, therefore, for Lord Mansfield to expound the Law of Contract as applicable to commercial exigencies, and he did so with an eloquence, knowledge and authority which prevailed against the obstacles thrown in his way by ignorance, prejudice and malice. He defined the principles on which insurances should stand; he laid down the law of agencies, partnership, and shipping, and in every department of commercial law it would be easy to show traces of his wisdom and knowledge. Since the time of Lord Mansfield, his learned successors had been chiefly occupied in expounding the principles he laid down and in making them applicable to new circumstances. In this it was only just to say that the Judges had been aided by the legislature. The result was the great and admirable body of jurisprudence now in force. The present Bill comprised ordinary contracts, especially those relating to commerce,

and did not depart in any essential particular from the English law. The English Law of Contracts had hitherto in this country been the ruling law in the presidency towns. In the mofussil, a system of so-called equity and good conscience had been nominally pursued, that was to say the provincial Courts had not been absolutely subject to the rules and principles of the English law as regarded contracts, but practically they had pursued that law. So that, in proposing a scheme applicable to the whole of India, we should not have any material discrepancies of practice to deal with, but might assume that the Law of Contracts was now practically the same in the two countries; and considering the obvious desirability of having the laws of India and England, so far as regarded commercial matters, identical, one of the most important questions which the Council would have to consider, when the Bill was discussed section by section, would be, whether some of the proposed alterations were proper to insert in a law applicable to a country in such intimate commercial relations with England.

With those few preliminary observations, he would proceed to go through the main provisions of the Bill. It would be the function of the Committee to whom the Bill would be referred to examine the details, and it would now be sufficient for him to point out the chief particulars in which the Bill departed from the English law. The scope and objects of the Bill were described in detail in the title, which was " a Bill to define and amend the law relating to Contracts, Sale of Moveables, Indemnity and Guarantee, Bailment, Agency and Partnership." It was hardly possible for any Bill to be more comprehensive in its character than the present Bill; nevertheless it would not take a long time to indicate the leading points in which the proposals of the Indian Law Commissioners differed from the existing law. The first point which he would notice was the deviation from the provisions of the Statute of Frauds. The great principle of that Statute, as he had already stated, was that all the more important contracts should be in writing, and that principle had been extended by Lord Tenterden's Act, which was also now in force in India. Nevertheless, regarding the state of society in India, and the long established practice of the great bulk of the Native population to make contracts orally, the Indian Law Commissioners had decided that the stringent provisions of the Statute were not applicable to this country. They therefore proposed to discard those provisions which required certain contracts to be in writing.

The next important point in which the Commissioners proposed a modification of the English law was with regard to the constitution of a contract. Hon'ble Members were probably aware that the English law regarded contracts

made without consideration to be binding only when expressed in writings under seal—a promise, for instance, made in a letter, would be invalid unless founded on consideration—not an adequate consideration—the Courts did not take into account whether the consideration was sufficient—but they required some consideration, and the Statute of Frauds, as interpreted by the Judges, further required that in certain cases the consideration should be in writing as well as the promise itself. That was the law as regarded simple contracts. But as regarded specialty contracts, or contracts under seal, as contra-distinguished from simple contracts, the law did not require proof of any consideration. The reason for that difference was obvious. Persons who entered lightly into a contract made by word of mouth, or evidenced by mere writing, should show that there was some reason or foundation for doing so, if they required the assistance of the Courts of law to enforce its performance. But when the parties entered into engagements under seal relative to the transfer of land, or into a partnership, or the like, the Courts had justly considered that the transaction was one which the parties must have entered into with due deliberation,—that a document framed with legal precision, and executed with legal formalities, accurately expressed their intention; and therefore, as regarded contracts in writing sealed and delivered, the Courts had not required evidence of consideration. Such was the law of England. The Indian Law Commissioners had proposed important modifications. They proposed to assimilate in this respect the law of the presidency towns to that of the mofussil, and to make no distinction between contracts under seal and contracts not under seal. But with regard to promises made without an apparent consideration, the Commissioners, although they did not require such contracts to be under seal, did require them to be expressed in writing, and registered with the permission of the promiser according to the provisions of the law for the registration of assurances.

There was another provision rather of a particular and technical character. By the law now in force, if a creditor promised to give time for the payment of an existing debt, his promise did not bind him unless some new consideration had been given for it. If, for example, one man sold a house or horse to another, the purchase-money to be paid within a given time, and if before the expiration of that period the seller granted time for the payment of the price, it was necessary that some new consideration should pass, as it was supposed that one party would never incur detriment without some corresponding benefit. That seemed to press the principle to an unreasonable extent, and the Commissioners accordingly proposed the abrogation of that requirement. The Bill provided that any person entitled to claim performance

of any engagement, might dispense with or remit performance of it wholly or in part without any new consideration appearing.

The next branch of the Bill related to the sale of moveables. It was a maxim of the law of England that, when a man, not the owner, sold goods to another, the owner retained the ownership, notwithstanding his loss of possession and the subsequent sale. If, however, the goods were sold in what was called market overt, the vendee acquired an indefeasible title in the goods so sold, and in the city of London every shop was comprised within that description. Whoever purchased goods within the City during the usual market hours acquired an indefeasible title, though the seller had stolen or found the property. So that one law prevailed in London, and another elsewhere in the country, except on special days, provided for particular places by charter or prescription. At the time that distinction was introduced, London was the only considerable city in the kingdom; it was the great mart of commerce to which every man resorted who wanted to make a purchase of goods of any magnitude. There were now, however, numerous cities in England where transactions of as much importance occurred, and it was not too much to say that the distinction just referred to was obsolete even in England. The Indian Law Commissioners discussed the question as to whether that state of the law should be altered. The question was, which of two innocent persons should suffer, the real owner of the goods, or the purchaser? The Commissioners said that hardship was undoubtedly suffered by an innocent person who was deprived in this way of his right to recover his undoubted property. On the other hand, a *bond fide* purchaser would generally suffer still greater hardship if he were deprived of the property he purchased. The owner was often justly chargeable with negligence in the custody of the property, the latter, *ex hypothesi*, was blameless. On the whole the Commissioners came to the conclusion that sales of property unattended by any circumstances of suspicion or fraud should vest the property in the purchaser. They applied similar provisions to the cognate case where goods were sold or pledged by an agent in possession of any documentary title thereto. Purchasers might acquire the ownership of such goods, unless of course the circumstances were such as to raise a presumption that the person in possession had no right to sell or pledge them.

There was another part of the Law of Contract in which the Indian Law Commissioners proposed an amendment. When a contract was entered into, it was competent to the parties to provide for its due execution by stipulating that, if one of the parties should fail to perform a certain act according to the

terms of the contract, he should pay to the other a specified sum of money; that sum generally being fixed at a large amount: for instance, in the case of a bond, the penalty was always double the amount of the contract-money which it was intended to secure, and the question often arose, what amount the person injured was entitled to? in other words, whether the sum mentioned should be considered as a mere penalty on which he could only obtain such amount of damages as a jury assessed, or as the amount of damages which he should be taken to have really sustained. The question whether, in any particular case, the sum was penalty or liquidated damages, depended on a variety of circumstances, and had given rise to much litigation, which the Commissioners proposed to avoid by abolishing the distinction, and simply enacting that when a contract had been broken, if a sum was named in the contract itself as the amount to be paid in case of such breach, the amount so named should be taken as the measure of damages agreed upon by the parties, and be paid accordingly.

Another subject comprised in this Bill was guarantee—an engagement with a creditor to fulfil the liability of a third person in case of his default. The corresponding provisions on this head formed a complicated and lengthy Chapter of English law. Much of the difficulty referred to arose from recognising a power, on the part of a creditor making a composition with or agreeing to give time to or not to sue his principal, to reserve, at the same time, his rights and remedies against the surety. The Commissioners proposed to simplify all this law, by enacting that, if a creditor compounded with or gave time to his principal debtor, the surety for him should be discharged from liability, even though the creditor endeavoured to reserve his rights and remedies against the surety. That seemed reasonable enough, because the position of a surety should be ascertained, and no liability should be imposed on a person responsible for the performance of the engagement of another beyond what the former himself had undertaken. It might make a great difference to a surety whether the debtor should be allowed time or not; many circumstances might arise which might prevent the debtor from performing his engagement, and any creditor who relied on a substantial surety for his guarantee would be under the temptation to be very lax in exacting performance from the principal debtor. It was therefore wisely proposed that, if a creditor gave time to his debtor, the surety should be discharged from liability. But where there were two or more co-sureties, and one was released by the creditor, that release would not discharge the others, nor free the released surety from responsibility to the other sureties. According to the law of England, where one surety was released, that release enured also to the benefit of his colleague. The Indian Law Commissioners were, however, of opinion that a cre-

ditor was entitled to the full protection stipulated for, and if he chose to give up one portion of his security, he should still retain the other. In like manner they held that the release of a joint surety without the consent of his co-sureties should not as between themselves operate as a release.

The next head of the Bill was the Law of Bailment. The Courts in England had been astute in defining the degrees of responsibility which attached to persons who took charge of property, whether as borrowers, hirers, carriers, depositaries or otherwise, and the system of gradation was now so complicated that it was difficult for a layman becoming a bailee to know what amount of care he was to exercise, and what responsibility he incurred. The Indian Law Commissioners, who appeared to be men of great vigour and decision, had proposed to solve that difficulty by discarding all those degrees of responsibility, and merely requiring, in all cases of bailment, such an amount of care of the goods bailed as a man of ordinary prudence would take of his own goods—the rule laid down in the English books in the common case of a bailment for hire. The wording of the clause as it stood in the draft sent out by the Commissioners was not, he thought, sufficiently precise. The defect, however, was remedied in the Bill as published in the *Gazette*. Another question which sometimes arose under the Law of Bailment was, when goods entrusted to another had been so carelessly kept that they had been mixed up with the goods of the bailee. The law of England considered the bailee's carelessness a penal dereliction of trust, and provided that the whole property so mixed up should go indiscriminately to the bailor. The Commissioners had, however, adopted the more reasonable rule of merely requiring that the person whose goods had been so dealt with should receive compensation for the loss he had actually sustained.

Another question arose as to continuing guarantees given by, for or to, firms. The law in England and (under Act V of 1866) in India was, that a guarantee to or for a firm should, except in special cases, cease on a change in the firm. But this had been found inexpedient. Mercantile firms in this country, even more than in England, constantly underwent change. To discharge the guarantor whenever an old partner retired, or a new one joined the firm, was not only in most cases opposed to the intention of the parties, but sometimes led to serious inconvenience. The Commissioners proposed that a continuing guarantee, given either to a firm or to a third person, in respect of the transactions of a firm, should not be revoked as to future transactions by any change of the members of the partnership. That, he thought, was a reasonable alteration, and one which would recommend itself to the approval of gentlemen engaged in commerce.

The next portion of the Bill embraced the great and extensive question of Agency, the fertile source of more litigation, as regarded contracts, than perhaps any other branch of the law. The Commissioners' provisions in regard to Agency were numerous. The principal points in which alterations of the present law were proposed were these. As the law stood, if a man, assuming the character of an agent, entered into a contract with another person who contracted with him in that character, and it turned out that the man was not contracting in the character of an agent, but as a principal, and also that the name of the assumed principal was used as an inducement to the bargain, which would not otherwise have been entered into, the Courts would not enforce the contract. But the Commissioners went further, and laid down that, whether the principal's name was used as an inducement or not, performance should not be enforced in a case where the party claiming it was in reality acting, not as agent, but on his own account. MR. MASSEY thought that was a sensible simplification of the law. There was also a modification introduced into the liability of a master for his servant's misconduct. Although it might be laid down, generally, that a master was liable for the wrongful acts of his servant, if those acts were done in the course of his employment, particular cases might easily be put, in which the master's responsibility could not justly be extended so far. The Commissioners proposed to make the master's responsibility cease as soon as the servant's misconduct assumed the character of intentional wrongdoing. This surely was reasonable, for the master's liability depended on an implied authorization, and the law should not assume that he had ordered his servant to do a wilfully illegal act.

Then came the very important subject of Partnership. He would only refer to one or two of the proposed modifications of the present law. The rule adopted by the English Courts with regard to the property of an insolvent firm was this, that where there was partnership-property, the separate property of any partner was in the first instance appropriated to the payment of his separate debts, the surplus (if any) being devoted to the discharge of the liabilities of the firm; but where there was no partnership-property, the creditors of the firm and the private creditors of the partner came in and shared alike the property. The Commissioners thought that distinction unreasonable, and that the more equitable rule was the first; they provided therefore that, whether there was partnership-property or not, the separate creditors should have the prior claim. That seemed to MR. MASSEY reasonable, because the private creditors of a partner looked to his sufficiency, and not to the property of the firm with which he was connected. There was another point on which he should like to hear the opinion of the two Hon'ble Mem-

bers engaged in commerce. The Commissioners proposed that all incoming partners should be liable in common with the rest of the partners to the obligations incurred by the firm before he was introduced. This was contrary to the present law, according to which an incoming partner was not liable for contracts previously made—the reason given being that he never authorized them. But the change seemed to MR. MASSEY not unreasonable: every incoming partner knew that ultimately he would be responsible for the existing liabilities of the firm, whether incurred before or after his introduction, and it was equitable that he should be responsible for contracts from which he received benefit if they turned out to be beneficial. Then there was another provision which the Council would no doubt adopt; it was proposed to incorporate the Act passed last year for relieving persons sharing the profits of a trading partnership from being liable to third parties as if they were partners.

Those were the main provisions of the Bill. A portion of the draft of the Indian Law Commissioners was, as he had before said, omitted. That omission had been made by Mr. Maine in exercise of the discretion which was vested in him as having charge of the Bill. The clauses thus removed from the draft related to the specific performance of contracts. Mr. Maine was of opinion that those clauses were not framed in a sufficiently liberal spirit, and he also thought that they properly belonged to a code of procedure rather than a code of substantive law; he believed, moreover, that it was desirable to leave the new Law of Contract to its operation for some little time before the question of remedies in case of breach of contract, which had been so long and so hotly disputed in India, was brought forward anew for discussion. MR. MASSEY concurred in the propriety of the course pursued; but it would be quite competent to any Hon'ble Member to move in Committee for the insertion of those clauses, or to move their insertion when the Bill was next before the Council.

He had now gone cursorily through those clauses of the Bill, of which, if it passed into law, he would say with Mr. Maine that "India would be in possession of a body of Contract Law which left nothing to be desired in point of simplicity and comprehensiveness, in respect of the essential equity of its provisions, and in respect of the perspicuity with which those provisions were set forth." He would further add that, if this great Code of law were successful here, it must sooner or later re-act upon England herself and all her dependencies. In the remarks that he had made, the Council would have observed that, although he could not expect that Hon'ble Members would accept the Bill in its integrity, he hoped that no material alteration would be

made in its provisions, which had been carefully considered by the Commissioners. He proposed to refer the Bill to a Select Committee, to keep that Committee open for such period as would admit of careful consideration, and to afford every opportunity to Hon'ble Members to discuss the details of the measure; and he trusted that Mr. Maine, who would return within that time, would then resume charge of the Bill.

The Hon'ble MR. STEWART GLADSTONE had no opposition to offer to the Bill. The principle of the measure was very admirable, and any objections which might be taken to the details could be discussed in Committee. It was unnecessary, therefore, that he should now notice those objections, and take up the time of the Council by any detailed remarks. Mr. Massey had asked from the mercantile members an expression of opinion respecting the proposed alteration of the law as to the liability of incoming partners. MR. GLADSTONE had no hesitation in saying that he thought it quite proper that incoming partners should be saddled, equally with those who continued in the partnership, with the pre-existing liabilities of the firm which they joined.

The Hon'ble MR. SKINNER said that whatever might be the opinion as to the details of the Bill—and there was room enough for a considerable difference of opinion—all, he thought, must be agreed in the principles on which it was founded. The want had been generally felt, especially in the mofussil, of some uniform and written law, clear, compact and well defined, which should no longer leave questions of contract to be decided by the vague and uncertain process of interpretation according to what Zila Judges and Munsifs might consider principles of "justice, equity, and good conscience." It was, he believed, the rule that remarks made at the present stage should be confined to the discussion of matters of principle; he did not therefore propose at present to consider any of the provisions of the Bill in detail. The different sections of the Bill would no doubt require considerable discussion, and those which had reference particularly to partnership called for careful handling. But with regard to section 256, as to the liability of incoming partners for the prior debts of the firm, he agreed with his Hon'ble colleague (Mr. Gladstone) as to the reasonableness of the terms of that section. He could not understand how a partnership could exist on any other footing than that which was maintained in that section. Whether or not incoming partners should be liable for obligations incurred prior to their introduction into the partnership was purely a matter of agreement between themselves; but as far as payments were concerned, he thought it fair and just that they should be responsible for all the engagements of the partnership, whether before or after their introduction.

The Hon'ble Mr. Hobhouse had not had time to go through all the provisions of the Bill, which, it must be remembered, was to apply not only to Europeans in this country, but also to the Natives. The first thing, therefore, to be considered was whether the provisions of the Bill were in accordance with the law, or to what extent they were in accordance with the law or decisions of the Courts, as applied to those persons who formed the immense majority of the inhabitants of this country, namely, Hindús and Muhammadans. As he said before, he had not had time to consider carefully all the provisions of the Bill, nor to consider as fully as he should like those that he had examined: that he proposed hereâfter to do. But those principal provisions that he had examined seemed to him to be curiously and carefully in accordance with the law both as declared by Hindú and Muhammadan jurists, and also as propounded by the Courts in this country. He would notice some of the principal provisions mentioned by Mr. Massey. The first point which he had taken up was in regard to that part of the Bill which provided that contracts need not be in writing. On that point the rule laid down was and always had been identical with the rule of both Muhammadan and Hindú jurists; and not only was that so, but, in the case of certain contracts, it was expressly declared that they need not be in writing. If, therefore, the Bill were to declare that all or any contracts must be in writing, it seemed to him that it would interfere much more than we had any right to interfere with the customs and habits of the country. It had, he was told, been supposed by some persons, that because the Code permitted contracts to be either oral or written, the Courts were in future to give a credit to oral evidence which they did not now give. Nothing could be more erroneous. In that respect the law would be untouched. In the numerous cases where, owing to the absence of a writing, the Courts gave no credit to witnesses deposing to a verbal contract, they would, and ought, to continue to disbelieve those witnesses, whether the Bill was passed or not.

Then, as to the subject of the constitution of contracts and the necessity of the contract expressing consideration on the face of it. On that point the Courts in India had, he thought, been coming to the decision that it was not necessary, on whatever matter the contract might be, to express consideration for it. That was the tendency of the decisions of the Courts at the present moment and the argument was that where a person had deliberately put his name to a contract, the presumption was that he had received consideration.

The next point was on the subject of sales, and the principle laid down was that, whether the vendor had a title or not, the *bonâ fide* purchaser for valuable consideration should be protected. That also was, he thought, the

doctrine to which the decisions of the Courts had of late been tending, and to which a recent decision of the Judicial Committee of the Privy Council seemed to point.

As to suretyship, it seemed that the rules of the Bill followed very much the decisions of the Courts, and those decisions seemed to say, and so did the law, that a surety should only be responsible to the extent to which he knowingly and deliberately made himself responsible.

In the Commissioners' provisions as to bailment there was such a curious and near approximation to the law which obtained among Hindús and Muhammadans, but especially amongst Hindús, from time immemorial, and even in the wording of the clauses of which Mr. Massey had spoken, that he thought it necessary to refer to them. In section 144, the rule laid down was that the bailee should take as much care of the goods entrusted to his charge as a man of ordinary prudence would take of his own property. That was exactly the rule laid down in this country from time immemorial, the basis being the care that every prudent man took of his own property. And again, by section 145, the bailee, in the absence of any agreement to the contrary, was not responsible for the loss, destruction or deterioration of the thing bailed, if not caused by his own fault. The law in this country was that, if the bailee was not in fault, he was not responsible. Again, in regard to section 147, if the bailee made any use of the goods bailed which was not according to the conditions of the bailment, he was liable to make compensation to the bailor for any damage arising. Here again the Hindú and Muhammadan law said distinctly that such user constituted a penal offence. These seemed to MR. HOBHOUSE to be very curious coincidences, and showed strongly that the Bill did in reality follow strictly the law obtaining amongst the majority of the inhabitants of this country. But there were as close analogies in other parts of the Bill. In section 5, it was laid down who had capacity to contract, and it was there shortly declared that every person who was a minor or of unsound mind, or who from drunkenness, illness or other cause did not know what he was about, was incapable of entering into a contract; and in an explanation it was stated that an insane person might contract during a lucid moment. That was almost word for word the law as laid down by Manu centuries ago. He said that minors, insane persons, and those incapable of knowing what they were doing from drunkenness, extreme illness, or old age, were incapable of contracting. So again as regarded sections 8 and 10. The principle of those sections seemed to be that there should be real assent on the part of the contracting parties, and so it was provided that, in the case of a person who was induced by deceit or coercion, or

by such influence as impeded volition, or who engaged in any contract under a mistake in an essential matter of fact, the contract should be either voidable or void. On that subject the Hindú law went a little further, and provided that where a person had been induced by force or fraud to enter into a contract, or where he had entered into it under a mistake, the contract should be absolutely void.

He had mentioned those points because it seemed to him that, if any of the provisions of the Bill were clearly at variance with the law as it had been applied to the inhabitants of this country—in matters in which that law was reasonable and proper—there could be no good reason why those provisions should be enacted. He thought that in those cases the law of the country should not be altered. But as far as he had gone, the Bill appeared strictly in accordance with the law as applied by the Courts here, and as laid down by Native jurists centuries ago, and was therefore likely to be at least as acceptable to the Native community as the law to which they had been accustomed. He would only add that he heartily concurred with his Right Hon'ble friend (Mr. Massey) in hoping that no material alterations would be made in the Bill. So far as legal principles were concerned (except, of course, when they might bear upon Indian politics), it seemed undesirable to open purely juridical questions which had been anxiously discussed and decided by the Commissioners, whose unpaid services the Government could not expect to retain if their work was to be considered a mere draft for the Indian legislature to begin upon.

The Hon'ble MR. BRANDRETH wished to say a few words with reference to the Bill, and more particularly with reference to the principles on which it had been framed. Those principles evidently were that the proposed law should be made as perfect in theory and reason as was consistent with its being also approved by the general experience of the most highly civilized Natives. In carrying out their purposes, the Commissioners had not only consulted the law of England, but had referred also to the French, German and Italian Codes, and had adopted some of the provisions of those Codes. No allusion whatever had been made to the customary law of India; but what the people of this country would probably be most bent on considering was, whether it would be for their advantage that the usages by which they had been hitherto guided should in any respects be superseded by the laws of other countries. Of course he did not presume for a moment to question the ability and skill of the learned Commissioners who had framed the Bill, or the theoretical perfection of the Bill itself: if there were any defects on this head, they would

doubtless be pointed out by those who had more skill in law than he could pretend to. He did not therefore propose now to speak of the Bill with reference to its theoretical fitness, but with reference to the extent to which it would be likely to interfere with the present laws and customs of the people; and from this point of view, it seemed to him that some of the provisions of the Bill were open to very serious objections. There were one or two provisions even which in his opinion would probably cause an increase of crime, especially of fraud and theft. It was a serious question whether the existing law of a country, if clear and definite, and not repugnant to morality, ought to be set aside on theoretical grounds, not merely because it was the existing law, though that in itself was a very strong reason for maintaining it, but because it would very likely be found in the end better suited to the peculiarities of the people, being what their experience had taught them to be for their advantage, than any law that could be substituted for it on grounds of abstract equity.

As a description of the present state of the law in India, the Commissioners remarked that, beyond the limits of the presidency towns, the Judge was to a great extent without the guidance of any positive law beyond the rule that his decisions should be such as he deemed to be in accordance with justice, equity, and good conscience; but surely the Commissioners did not mean that the extensive transactions of the Native merchants and traders were regulated by no common law; that no principles of commercial law were to be gathered from the decisions during a long course of years of the learned Judges who had presided over the High Courts. At all events, he ventured to say that this description was not applicable to the Panjáb. They had already a Code of Civil Law in the Panjáb, a Code which, if he was not misinformed, had been recognized as law by decisions of the Privy Council. No doubt this Code had not been prepared with the skill of a practised conveyancer; its strength lay, not in the exactness of its wording, but in its being based on the customs of the country. They were told in the preface to the Code that it was "framed with a regard to the known peculiarities of the country," and that "special enquiries were made with reference to the commercial portions of it from the heads of the mercantile community at Lahore and Amritsar." Now he believed he should be able to satisfy the Council that the existing law of the Panjáb, of which alone he had had any experience, differed in some very material and important respects from the law which the Commissioners proposed to enact. If he could show this, there would undoubtedly be reason for supposing that there might be similar differences between the existing and proposed law in other portions of the Indian Empire besides the Panjáb. The English law might not have been followed to the extent supposed by his Right Hon'ble friend Mr. Massey. That portion of the English law which required that certain con-

tracts should be in writing certainly had not been followed anywhere out of the presidency towns; it was possible that other portions of Englsih law might have been no less disregarded. His Hon'ble friend Mr. Hobhouse had no doubt traced some remarkable resemblances between Hindú and Muhammadan law, and the law of this Bill; but the same resemblances might not extend to those parts of the Bill which he had not had leisure to examine, or the law of the Hindú law-books in commercial matters might have been entirely superseded by local usages, as it undoubtedly had been in many parts of the country in regard to the law of inheritance. It would certainly be incumbent on them carefully to examine what the differences were between the existing and proposed law, before they consented to pass the Bill in its entirety.

To show some of the differences between the law of the Panjáb and the proposed law, he would first ask the Council to turn to section 75 of the Bill, where it was laid down that the ownership of goods might be acquired by buying them from any person who was in possession of them;" but according to the section on Sales in the Panjáb Code, if the property should have been purchased by private sale, the purchaser could not acquire a valid title from the seller who had not ownership. The most common crime over a great part of India was cattle theft; the stolen cattle, if recovered, were often not recovered so much by the exertions of the Police, as by the continued and anxious search of the owners, by a search sometimes continued for months and even years, and during which a good deal of money was often paid to informers; but if the inducement given to such searching by the existing law was taken away, the owners of stolen property would undoubtedly relax their efforts. The information hitherto so constantly given to the Police by wary purchasers would no longer be given; the security so often insisted on under the present law by the purchaser to protect himself from loss would no longer be necessary; the tendency of the proposed law would be unquestionably to increase theft in general, and especially cattle theft. He would ask any Member of the Council who had ever sat on the magisterial bench in this country, what he thought would be the opinion of the neighbours when they heard, for instance, that a man finding his stolen cow, after all the anxiety and expense to which he (Mr. Brandreth) had adverted, was told that by the new law the cow was no longer his, because another man had bought it. He had no hesitation in saying that the alleged equity of such a law would be utterly incomprehensible to them. It was true that, by the same section to which he had already referred, it was provided that the buyer acted in good faith, and under circumstances which were not such as to raise a reasonable presumption that the person in pos-

session had no right to sell: but grazing rights were almost as common to the Indian portion of mankind as air and water were to mankind in general. The consequence was that almost every man in India possessed some kind of four-footed grazing animal, and thus it could hardly be presumed regarding any one who wanted to sell such an animal, if stolen, that he had not the right to sell. It was worthy of remark also that the English law on the subject of the ownership of stolen goods was much to the same effect as the Indian Law; it was the principle, not only of the law of India, but of the law of England also, which the Commissioners proposed to set aside on account of alleged want of equity. The Commissioners did not even state that they had found a confirmation of their views in the law of any country. He did not himself in the least see the force of the arguments used by the Commissioners on this subject, which had been quoted in the Statement of Objects and Reasons. That however was a question of a theoretical character into which he said before that he had no intention of entering.

He now referred to section 145 of the Bill, regarding Bailment, for his next comparison between existing and proposed law. This section provided as follows. "The bailee, in the absence of any agreement to the contrary, is not responsible for the loss, destruction or deterioration of the thing bailed if not caused by his fault," but by the section on Bailment in the Panjáb Code, in the case of a pledge, "the pawnor on loss of pledge could not ordinarily be compelled to pay a debt for which he had already given satisfaction." He would with the permission of the Council read an extract from the commentary on the section, appended to the Panjáb Civil Code. If the article pawned should be lost without any fault of the pawnee, "by the Muhammadan Law," they were told, "the pawnee is responsible. It is held that *amissio pignoris liberat debitorem:* that the loss extinguishes the debt; and that moreover if the value of the lost pledge exceeded the amount of the debt, the pawnee must reimburse the pawnor accordingly. This rule Sir W. Jones stigmatizes as contrary to reason and justice and to the prevailing tendency of other Codes; but Sir W. Macnaghten strenuously defends it in his preface to the Principles of Muhammadan Law" * * *
"Sir W. Macnaghten's sentiments appear to be applicable to Indian society and not destitute of justice. In India deposited goods are not unfrequently tampered with and concealed or made away with under a false pretence of theft; simulated burglaries are not unfrequent, and, notoriously, the first question that obtrudes itself on a police authority is not so much who is the criminal, but whether the crime was committed at all? Such cases may be rare in Europe, but in this country suspicion hangs over the loss of a pledge alleged to have happened without any fault of the pawnee. Special enquiry has been

made as to the custom and feeling on this subject in the Panjáb; without doubt the pawnee is considered responsible for the loss or injury of the pledge, whether he be in fault or not."

He would confidently appeal to the experience of any member of that Council who had acted as a Magistrate in India, to confirm the truth of the remarks which he had just read. He felt certain that after the experiences he must necessarily have had of the many false statements put forward regarding deposits and pledges by those to whom they had been entrusted, he would hold it to be very impolitic to weaken in any way the responsibility which attached to pawnbrokers or pawnees of whatever kind by the existing law.

The next reference he would make was to the proposed Law of Partnership. Section 245 of the Bill provided that every partner was liable for all debts and obligations incurred by or on behalf of the partnership. But by the Panjáb Code each partner was ordinarily liable for his share and no more, in the absence of an express agreement to the contrary.

"The limitation," it is remarked in the commentary on the section on Partnership in the Panjáb Code "is but just to those who engage in partnership on this universally implied condition. It certainly cannot be unjust to those who deal with and give credit to firms on this invariable understanding," and further on they were told that this principle was "deemed a vital one to the commerce of the Province." Now take the case of a man of substance who had, say, an anna share only in some concern, with other persons who held the remaining fifteen annas, but whose guarantee for their engagements was not worth much; money had consequently been borrowed at a very high rate of interest; the business did not succeed; the firm was not able to meet its engagements: if the proposed law was passed, the creditors might then be able to bring ruin on the wealthy partner by demanding payment of the whole of a debt for which he had no reason for supposing himself responsible, while the creditors themselves would gain a security for the payment of their money, which they were not the least aware of possessing at the time that they lent their money. It seemed to him that such a change in the law would be highly injurious and inequitable.

Another difference MR. BRANDRETH saw had been pointed out by the Assistant Secretary in the Legislative Department, in a Note of his on this Bill, a copy of which he (MR. BRANDRETH) had recently seen. It appeared that under the Bill, the full amount of dower stipulated for at a Muhammadan marriage must be decreed on the claim of the wife in case of divorce, and that

the discretion with which the Courts were invested by the Panjáb Code, of reducing the amount, would no longer be left to them. Muhammadans as a safeguard against capricious divorces often stipulated for an amount of dower far beyond the means of the bridegroom; but it was not only in case of divorce that the dower was claimable by the wife—she might claim it at any time either during her husband's life or after his death, and in either case the Courts, by the Panjáb Code, had the power of reducing the amount contracted to be paid, if excessive. He was not sure that they would be left with any such equitable power under this Bill.

He did not pretend, however, to have as yet instituted a complete and exhaustive comparison between this Bill and the existing law of the Panjáb. There were differences also in regard to the question of consideration in contracts, the warranty of the goodness of things sold, the dissolution of partnerships, and other matters, which he would not further trouble the Council by entering into, but what he had stated would be sufficient to show to the Council, he thought, that there were very important and material differences. He was decidedly of opinion that this Bill ought not to be passed into law without carefully comparing its provisions with those provisions of the existing law throughout India which would be superseded by the proposed law, and this was a task to which he hoped the Select Committee to which he saw Mr. Massey proposed that the Bill should be referred, would devote itself. Many of the provisions of this Bill were no doubt most admirable, and would make clear and definite numerous points which had not hitherto rested on any certain basis; but when the existing law on particular points was already clear and definite and suited to the known peculiarities of the country, in his opinion it ought not to be altered and set aside, merely because the provisions of this Bill on those points appeared to be theoretically more perfect.

His Excellency the President thought there was a good deal in what had fallen from Mr. Brandreth well worthy of consideration, especially with respect to the provisions regarding the acquisition of property by purchase in market overt, and to the clauses relating to bailment. The President was quite in accord with Mr. Brandreth in thinking that any change of the law of Sale, such as that which the Commissioners proposed, would give great encouragement to thieves in general, and more particularly to cattle-stealers.

It was a mistake to suppose that the law regarding the acquisition of property by purchase, which had been referred to, was limited to the Panjáb.

His own belief was that the law all over this side of India, with the exception of the presidency towns, and certainly that of the North-Western Provinces, was the same as it was in the Panjáb. In the North-Western Provinces it was notorious to every Magistrate that cattle-stealing, and the stealing of all kinds of animals, was very prevalent, and he believed it would be greatly encouraged by any change of the law whereby the property became indefeasibly vested in the purchaser. Many parts of the North-Western Provinces as well as of the Panjáb were conterminous with foreign territory, where theft of all kinds prevailed; and it was well known that the great security against cattle-stealing was the desire of the owner to get back his property. He pursued and traced it, and assisted the police in ascertaining who were the thieves and receivers, and as Mr. Brandreth had explained, if that incentive were removed by a change in the law, the principal means whereby the offence was kept down would be lost. He (THE PRESIDENT) could call to mind many cases in which valuable cattle—cows, camels, horses, brood-mares, and the like—had been stolen and carried away hundreds of miles, and been traced from place to place by the owners, assisted by their friends, and eventually the offenders had been brought to justice. He thought that state of the law well suited to the state of the country, and any change was to be deprecated.

Mr. Brandreth's remarks as to the law of bailment and as to dower were worthy of consideration. Not only were excessive dowers contracted for with a view to prevent frequent divorces, but also on the ground of *izzat* (family honour), men stipulated for an amount of dower which it was never intended should be paid. The Select Committee to whom the Bill would be referred would do very right in considering carefully the observations which had fallen from Mr. Brandreth.

The Hon'ble MAJOR GENERAL SIR H. M. DURAND concurred generally with the remarks which had fallen from Mr. Brandreth and His Excellency on the application of section 75 of this Bill to cattle-lifting. It would only be necessary on his own part to call attention to the fact that the practice of the recovery of stolen cattle by the original owners prevailed as law and custom, not only in our British provinces in India, but in every Native State. It was in fact the common law of India throughout its length and breadth. Wherever our borders were conterminous with Native States, or the frontiers of the latter interlaced with each other and ourselves, there was no more frequent cause of reference to our Residents and Political Agents, as well as to our civil authorities, than the recovery of stolen cattle, and he was con-

vinced that departure from the principle hitherto pursued in the adjudication of such cases would cause great discontent; for, being contrary to immemorial usage and to the sense of the people, the institution of the new principle in favour of the purchaser would not be understood. It would come into conflict with all precedent and practice, both in our own territory, and in a multitude of inter-jurisdictional cases, in which from our relations with Native States, our Residents and Political Agents were and had been perpetually the referees. The sudden passage from their old and universally accepted principle of law to a new one would certainly not be acceptable, or indeed comprehended.

His own experience fully bore out what Mr. Brandreth had advanced in objection to the provisions of the particular section on Bailment which he had quoted from the Draft Act. An alleged robbery of goods bailed was the commonest form of expedient for endeavouring to elude a bailee's responsibility, and, in the majority of cases, had not the smallest foundation in fact.

He would not touch upon the point of Dower Contracts to which Mr. Brandreth had adverted—a large and complicated subject, and an important one—nor indeed would he allude to other points which would be found to conflict with the existing laws and practice of various parts of the empire. They were numerous, and would demand very careful scrutiny and consideration. In the main he concurred with the general principles embodied in the draft Contract Law now before them; but the detailed application of these principles, where they came into marked conflict, as they would be found to do, with the common law and usage of India, would demand the utmost attention, if not limitation and modification.

The Hon'ble MR. TAYLOR said that as his Hon'ble friend Mr. Brandreth had appealed to the experience of Members of Council who had ever exercised magisterial functions in India, in support of his objections to several of the provisions of this Bill, he (MR. TAYLOR) desired to say two or three words on the subject of the sale of goods in open market, one of the points to which his Hon'ble friend had specially referred. He wished to express his general concurrence in the remarks which had fallen from His Excellency the President and Sir H. Durand; they were applicable, not only to the Panjáb and to border countries generally, but to every part of India with which he was acquainted. No doubt, the danger was great of any sudden or complete reversion of the existing law or custom, under which stolen property, although bought in open market, was usually restored to the owner. But it seemed to him that the change contemplated in the Bill was not so radical as His Excellency and

the other Members of Council supposed; nor was it altogether opposed to the spirit of Hindú law or to local practice in some parts of India. He would refer to the remarks of the Indian Law Commissioners which had accompanied their draft Bill, and to which considerable weight was due. They admitted the difficulty of the subject, but after balancing the hardship of denying to the owner the right of recovering his undoubted property, against the hardship, to a *bonâ fide* purchaser in open market, of being deprived of what he had bought, they considered that, both on grounds of equity, and in the interest of commerce generally, the greater weight was on the side of a rule favourable to the purchaser. But in so deciding, they were careful to provide that the buyer must be understood to act in strict good faith, and that there must be a reasonable presumption, from the circumstances of the case, that the person in possession of the goods had a right to sell them. Guarded in this way, he did not think that this section of the Bill was open to the strong objections urged by Mr. Brandreth, or that it would be productive of the evils apprehended by His Excellency. Even in the case of cattle-stealing, a common offence all over India, the considerations which he had stated would apply. The attendant circumstances at the time of purchase would be the Magistrate's guide in each case, whether they were or were not such as to raise a reasonable presumption that the person in possession had no right to sell. If they were, he would restore the cattle to the real owner; if they were not, and it was clear that the buyer had acted in good faith, the latter would be allowed to retain what he had fairly bought. In forming a judgment as to the reasonableness of a presumption either way, a good deal would of course depend upon the distance of the place of purchase from the place where the theft was committed, and upon the general repute and known habits of the seller. Then, as regarded the supposed novelty of the rule laid down by the Commissioners, he (MR. TAYLOR) would read to the Council a passage in the Note of the Assistant Secretary in the Legislative Department, which had perhaps escaped Mr. Brandreth's attention. Speaking of section 65, "the rule here laid down as to sale in market overt," says Mr. Stokes, "will not be so novel in India as the Commissioners appear to suppose. I am informed by Mr. Fitzpatrick (a Deputy Commissioner in the Panjáb) that the Panjáb Code extends the rule of market overt to every bazaar in the Province, without however much benefit to the public. The Hindú Law has a curious and by no means inequitable rule on the subject. The real owner can always recover the goods from the purchaser, who again can recover the price from the seller. But when the purchaser has bought *bonâ fide* in open market and cannot produce the seller, the owner can only recover on payment of half the value." 'To purchase a thing,' says Vrihaspati, 'from an unknown seller, is one fault; negligence in

keeping the thing is another; and these two causes are to be considered as just causes of loss to each." This would seem to show that the ancient Hindú lawgivers had as keen an appreciation of the difficulty of the subject, and of the injustice of throwing the whole loss on a blameless purchaser, as the Indian Law Commissioners. Whether this or a somewhat similar rule could be adopted, or any modification be introduced into this section as drawn by the Commissioners, would be for the Select Committee to determine. He (MR. TAYLOR) fully owned that it was a point of great importance, and that it deserved very careful consideration.

The Hon'ble MAJOR GENERAL SIR H. DURAND, with the permission of the President, said that the precautionary and remedial measures suggested by Mr. Taylor as feasible were not provisions of the Bill. And on the distinction drawn between market overt and private sale, he (SIR H. DURAND), must be permitted to add that, in the matter of the sale of stolen cattle, the distinction was in this country a delusive one; practically, there was as little security in the one as in the other mode of transfer for the original owner from whom the cattle had been stolen.

The Hon'ble MR. HOBHOUSE, with the permission of His Excellency wished to say a few words on the subject of section 75 which had been so much discussed. The question seemed to him to resolve itself into this, whether the innocent purchaser or the innocent loser should be the person to suffer. He did not mean to say that there might not be good reason shown for making an exception as regarded any part of India; on the contrary, he thought that, where necessary, exceptions ought to be made. But on the question of principle, he did not think there could be much doubt. An innocent purchaser was in no way responsible for the loss suffered by the owner. He went to a market to which, to take the case under discussion, cattle were ordinarily brought for sale; he went to a cattle-stall, paid a fair price for what he bought, and went away. But the proposed law required that he must act in good faith, and under circumstances which ought not to excite a reasonable suspicion as to the vendor's right to sell. Now, as regarded the innocent loser, there were two means of protection afforded him. First, there was the criminal law which might be brought to bear on the person who stole and on his abettors. Then the section only protected the purchaser of the stolen property when the circumstances were not such as to raise a reasonable presumption that the person in possession had no right to sell. MR. HOBHOUSE therefore thought that under the law as it stood and as proposed, more protection was given to an innocent loser than to an innocent purchaser.

The Right Hon'ble MR. MASSEY said he gathered from the discussion that had taken place that there was a general assent in the expediency of some such measure as the present, and that the sense of the Council was not adverse to the principles on which the Bill had been constructed. His Hon'ble friend Mr. Brandreth, in discussing the Bill in a somewhat critical spirit, admitted that it contained many admirable provisions, and MR. MASSEY hoped, notwithstanding the objections he had urged, that he should have his Hon'ble friend's co-operation in passing it. Mr. Brandreth seemed to censure the Indian Law Commissioners because they had consulted the Codes of foreign countries, but MR. MASSEY thought the Commissioners would rather have deserved censure if they had failed to inform themselves of the modes in which all civilized countries had practically dealt with the great question of codification. The Hon'ble Member also complained that the effect of the Bill would be to interfere with the law in force in the Panjáb, but MR. MASSEY must remind him that the law now proposed was a considerable departure from that in force in the presidency towns, and the same objections might be made by the High Courts on their original sides. He thought that, if any alteration were made, the law should be uniform throughout the country: no Province should be isolated, especially in such a matter as the law relating to mercantile contracts; but if any special circumstances existed which rendered any portions of the law inapplicable to the Panjáb or any other Province, that Province might be specially saved, at least for a time, from its operation. His Hon'ble and learned friend Mr. Hobhouse had, on the other hand, shown that the Indian Law Commissioners had not been unmindful of the peculiarities of the country in framing the clauses of the Bill. He had pointed out what he termed coincidences between the Hindú law and the provisions of the Bill, but he would probably have been more correct if he had said that the Native laws on the subject had been carefully examined by the Commissioners, with the view of maintaining, as far as possible, a harmony between ancient customs and the new law. Mr. Brandreth had also objected to section 75, and seemed to apprehend that the Bill would degenerate into a cattle-stealers' Bill, in consequence of the extension of the law of market overt, which, if enacted in its present form, it would effect. In objecting to the provision, MR. MASSEY was inclined to agree with him, not so much from considerations of abstract equity, as from those of political expediency. The law on the subject was certainly in an unsatisfactory state; there was nothing like it in any civilised country but England and her colonies; the State of New York had, he believed, recently rejected it from their system, and if Mr. Brandreth succeeded in satisfying the Committee that the proposed change would encourage theft, any modification which he might propose would be carefully considered and possibly adopted. But if Mr. Brandreth tried to persuade the Com-

mittee that it was expedient that there should be one Law of Contract for the Panjáb, and another for the rest of the country, MR. MASSEY could not congratulate him on his prospects of success.

Other observations relating to the details of the Bill had been made; they came before the Council with great weight, and would doubtless receive due consideration in Committee. On the whole, he thought that the promoters of the Bill had reason to be satisfied with the mode in which the measure had been received; and he believed that the result would be a measure calculated to meet all the circumstances of the country; that it would be found a great boon to all engaged in business in the mofussil, and that the success of this first attempt at codifying the rules of the Law of Contract would affect in the happiest manner the legislation of Great Britain and the British colonies.

The Motion was put and agreed to.

INDIAN NEGOTIABLE INSTRUMENTS' BILL.

The Right Hon'ble MR. MASSEY asked leave to postpone the motion which stood next on the List of Business to introduce the Bill to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques and to move that it be referred to a Select Committee with instructions to report in three months.

Leave was granted.

MUNICIPAL COMMITTEES' (N. W. P.) BILL.

The Hon'ble MR. BRANDRETH, in moving for leave to introduce a Bill to make better provision for the appointment of Municipal Committees in towns in the North-West Provinces, and for other purposes, said that the Bill was brought forward at the request of the Lieutenant Governor, North-Western Provinces; it was proposed to frame it in a great measure in accordance with the provisions of Act XV of 1867, an Act passed during the last Session, for the improvement of municipal administration in the Panjáb. The existing Municipal Act, XXVI of 1850, had been found in the North-Western Provinces to be deficient, as regarded many of the requirements of the present time, in the same way in which it was found to be deficient in the Panjáb. It was requisite that the Lieutenant Governor should have the power of appointing Municipal Committees in such towns as he might think proper, and of directing the Committees to provide in the first place out of the funds for the maintenance of the Police establishments. It was desirable to enlarge the description of the

objects to which, after providing for the Police force, the funds of the Municipality might be devoted, to make provision for the support of educational, charitable and other similar institutions. It was also proposed to authorize the Committees to borrow money for the construction of works of permanent utility, to enable them to deal in a more satisfactory manner than hitherto with nuisances, and in general to put the municipal administration on a better footing.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART moved that the Hon'ble Mr. Stewart Gladstone be added to the Select Committee on the Bill to consolidate and amend the law relating to Merchant Ships, Seamen and Passengers by Sea.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE moved that His Honour the Lieutenant Governor of Bengal be added to the Select Committee on the Bill to consolidate and amend the law relating to Principal Sadr Amíns, Sadr Amíns and Munsifs, and for other purposes.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to define and amend the law relating to Contracts, Sale of Moveables, Indemnity and Guarantee, Bailment, Agency and Partnership—The Hon'ble Major General Sir H. M. Durand, the Hon'ble Messrs. Brandreth, Shaw Stewart, Hobhouse, Skinner and Stewart Gladstone, and the mover.

The Council adjourned till the 13th December 1867.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

CALCUTTA,
The 6th December 1867.

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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 13th December 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant Governor of Bengal.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble Sir George U. Yule, C. B., K. C. S. I.
The Hon'ble E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble J. Skinner.
The Hon'ble Steuart Gladstone.

INDIAN NEGOTIABLE INSTRUMENTS' BILL.

The Right Hon'ble MR. MASSEY introduced the Bill to define and amend the Law relating to Promissory Notes, Bills of Exchange, and Cheques, and moved that it be referred to a Select Committee with instructions to report in three months. He said that the present Bill dealt with a branch of the general law of contract comprised in the Bill which he had laid before the Council at their last sitting. As however the law of negotiable paper embraced a separate subject, he thought it desirable to present it as a separate Bill, in the form in which it had been prepared by the Indian Law Commissioners; but he should propose that the Bill be referred for consideration to the Select Committee which had been appointed on the Indian Contract Bill, and, if such a course should be deemed advisable, the present Bill might be incorporated with the larger body of law. The Bill was, for the most part, an adaptation of the English law of bills of exchange, promissory notes, and cheques, as long administered in Great Britain, the presidency towns and for the most part in the mofussil, except where, in the case of hundís, a custom had been established. A bill of exchange was perhaps the simplest document that could be framed, and yet so multiform were the combinations of circumstances arising from the rights and liabilities of the parties, that the decisions on the subject now formed a voluminous and complex body of law. He held in his hand a text-book of no

small bulk, which was merely an abstract of those decisions; the Council would not therefore be surprised when he had to present to them a Bill on the subject, which contained 145 sections. The greater part of the Bill, of course, consisted of mere matters of detail; and it would be the duty of the Select Committee to whom the Bill would be referred, to go through the clauses *seriatim* and consider whether they were suited to the circumstances of the country. He would only embarrass the subject if he plunged into all the details comprised in the Bill, and would therefore now merely notice a few of the prominent points in which the Indian Law Commissioners recommended a deviation from the law as it obtained in England. Those recommendations were chiefly in the direction of giving greater security to the parties to these instruments, and increasing the facilities for their negotiation; and if the Council were of opinion that those objects had been attained, they would come to the conclusion that a great amendment of the law had been effected.

No important alteration was proposed in regard to the form of a bill of exchange. Such instruments were the creatures of commercial necessity, and their form had been so long established that it would be exceedingly inconvenient to depart from it. The Commissioners, however, recommended that a bill of exchange might be signed by a stamp or by a seal. As he understood the law, manual signature was excused in the case of bills and notes only where the drawer or maker could not write, and then he might sign by his mark. The Select Committee should, he thought, carefully consider the expediency of the proposed alteration. There were also provisions empowering the holder of an instrument payable to bearer to restrict its negotiability by making it payable only to order or to an individual. The present law on this head unreasonably restrained the powers of the holder, and was, MR. MASSEY believed, not in accordance with the wishes of the mercantile community. The Commissioners did not propose (except in the case of a person signing without authority) to extend the liabilities of parties to a negotiable instrument. But as regarded the liability incurred by a person who drew a bill or made a note in the name of another, without authority, the Commissioners had made an important change. By the law as it stood it appeared that, in such case, the drawer or maker incurred no *civil* liability. The Commissioners had, however, adopted from the German law a rule providing that, in the case of acceptors as well as of others, a person who signed without authority the name of another to a negotiable instrument, should be personally liable upon it, exactly as the person whose name was so signed would have been if he had given authority.

A cheque on a banker was a form of inland bill payable to bearer on demand. By the English law, the drawer of a cheque was not discharged from liability

by the failure of the holder to present it in due time, unless he sustained actual loss in consequence of the delay, and then he was only discharged from liability to the extent of the loss, and no further. The Indian Law Commissioners were of opinion that the principle of that rule should be applied to all cases where the drawee of a bill of exchange had a fund in his hands at the disposal of the drawer, and had in effect provided that a bill of exchange should in this respect be an instrument of precisely the same character as a cheque, provided it was drawn on a person who had in his hands funds of the drawer. That, MR. MASSEY thought, was an improvement to which in practice there could be no reasonable objection.

Another point in which the Commissioners proposed an amendment was in regard to the rights of indorsees after maturity. As the law stood, indorsement *before* maturity might give the indorsee rights greater than those which the indorser himself possessed, and although the general rule was that indorsement *after* maturity gave the indorsee only the rights of the indorser, there were certain cases in which the indorsee might obtain a perfect title from an indorser who could not recover on the instrument. The Commissioners proposed to abolish these exceptions, and they said "It appears to us desirable to maintain, and even to mark more strongly, the distinction between indorsements made before and those made after maturity. According to the rule of English law, indorsement before maturity may give to the indorsee greater rights than the indorser himself possesses. On the other hand, indorsement after maturity can in general give to the indorsee only the rights which the indorser possesses. There are, however, excepted cases. Where a bill of exchange is indorsed for value after maturity, the indorsee obtains a perfect title against a previous signer, although such indorsee may have known, when he took the instrument, that the signer signed it for no other cause than the accommodation of another. Again, there may be an indorser and indorsee of an instrument, who stand in such a relation to each other, owing to facts independent of the instrument (such as a set-off in a general account), that the indorsee cannot recover the amount of the instrument from the indorser; yet this indorsee may indorse the instrument to another person even after its maturity, and that other person can recover the amount from the indorser. We think it better not to recognise either of these exceptions from the general law, and we have so framed our proposed law that, in these cases, a person to whom an instrument is transferred after maturity shall acquire only the rights of him by whom it was transferred." The Commissioners, it would be seen, proposed to carry out to its full extent the dictum of one of our greatest Judges, who said that after a bill or note was due, it came

disgraced to the indorsee, and it was his duty to make inquiries concerning it. If he took it, though he gave a full consideration for it, he took it on the credit of the indorser and subject to all the equities with which it might be encumbered. That part of the Bill, however, which referred to the status of a bill after it had attained maturity would, MR. MASSEY apprehended, probably not be very much resorted to. A bill of exchange was a commercial instrument, and commercial men would generally take care that it was presented at maturity, and it would rarely happen that any laches would take place in presentation, because a man in business knew well that the credit of a bill was impaired, and the security of the holder was diminished, after maturity.

There was another antiquated practice which the Commissioners proposed to abolish. The drawee of a bill of exchange was always allowed what was called days of grace, that was, in England and India, the bill was not presented till after the expiration of three days after it became due. The Commissioners were of opinion that this practice was not recommended by reasons of necessity or convenience, and thereforeproposed to abolish it, and to substitute the simple rule that a bill should be payable when it expressly became due. Another novel provision related to the place of payment, when a bill had been made payable at a particular locality, where a man had his residence and place of business in one and the same town. The question had arisen whether a bill of exchange should be presented to him at the place where he transacted his business, or at his residence. On this point the Commissioners proposed that the bill should be presented for acceptance either at the place of business or at the residence of the drawee; but MR. MASSEY was inclined to think that it would be more convenient to make the rule on the subject positive.

The next provision referred to the subject of notice of dishonour, and on this point he must say that the law was not in a very creditable state. He hoped it had never been the misfortune of the Hon'ble Members of that Council who were connected with commerce to protest a bill. When a bill fell due and failure in payment was made, the holder had to give due notice of the dishonour to the indorsers and (in the case of a bill payable to a third party) also to the drawer. One would suppose that, for that purpose, the simplest form of words would be sufficient, and indeed the Courts had been studious in asserting that no particular form was necessary; but in practice, the Courts had been critical in construing such notices, and it had become hardly safe for any man in England to give notice of dishonour except under professional, or at least notarial, advice. The books abounded in cases

in which notices of dishonour had not been considered sufficient. If the holder of a bill wrote to the man who had to pay, and told him that the bill had been dishonoured, what inference could be drawn by the receiver of the notice except that the holder looked to him for payment? But the law required that the holder must not only apprise the party liable, of the dishonour, but also intimate that he was expected to pay the amount. The Commissioners had proposed a great improvement in the law as regarded that point: their proposals, indeed, were always in the direction of simplicity, and were made with the view to prevent the raising of questions in regard to instruments which ought to be at once convertible and negotiable without difficulty. They got rid of all those questions of legal and proper notice by merely requiring that a notice of dishonour should state the fact of dishonour, and dispensed with the necessity of expressly intimating the intention of the holder to look for payment to the party served.

Other provisions related to remedies on lost bills. By the law of England, the holder of a bill of exchange who was entitled to payment, and which by accident was lost, was entitled to payment on giving security to indemnify the payer, and this rule had been recently adopted by the Indian legislature. The Commissioners proposed to restrict the operation of the rule to claims against the maker of a note and the acceptor of a bill. No reason was given for excluding indorsers and thus curtailing the rights of holders, and the proposed restriction would, MR. MASSEY thought, require careful consideration. His present impression was that the proposed change was a concession to indorsers to which they were not fairly entitled.

There were also provisions as to alterations in negotiable instruments. The present law on the subject, which rendered an instrument invalid by an alteration made even by a stranger, certainly seemed too severe. The Commissioners provided that such alterations should have no effect on the liabilities of a party signing as maker or acceptor before the alterations were made. That, he thought, restrained the doctrine within safe limits. MR. MASSEY need not now go into other details which were more fit for discussion in Committee than for debate in Council. The points which he had stated were, so far as he had been able to discover, the more prominent points to which the attention of the Council should be drawn. He did not know that he could claim for the able framers of the present Bill that deference which he hoped they would meet with in the case of the Contract Code. He would ask his two Hon'ble friends who were engaged in commerce, to give their careful attention to the provisions of the Bill, as the Select Committee would, no doubt, expect from them sound opinions for their

guidance. He might mention that the fact of there being differences of opinion in other quarters, as to the principles and provisions of the Bill, had lately come to his knowledge. He had received a statement from a gentleman well acquainted with the subject and entitled to speak with some authority, commenting upon and criticising the Bill in an unfavourable spirit. Mr. Massey had directed that those observations should be put in print and circulated to the Members of the Council, and they would no doubt form the subject of discussion in Committee. All that he had now to do was to move that this Bill be referred to the Select Committee on the Indian Contract Bill with instructions to report in three months.

The Hon'ble Mr. Steuart Gladstone said that when first he saw this Bill, he was of opinion that it would be a very useful addition to the laws of the country, but since he had more carefully studied its provisions, his opinion had somewhat changed, and unless it was greatly altered in Committee—so altered indeed as to be hardly the same Bill—it had better at once be thrown out for any benefit it was calculated to do the public. As a matter of fact, he did not know of any grave objections to the laws which at present regulated such transactions, but he freely admitted that it might be a boon to have such laws codified in some such form as that proposed, so that those anxious to make themselves acquainted with law might have the opportunity of doing so without much labour or difficulty, for at present most people, he feared, followed customs blindly, without knowing what the exact law really was. He therefore thought that it might be desirable for the Bill to pass into Committee, there to be recast and remodelled as might appear desirable. It reminded him, however, of the story of the Quaker who, wishing to give some idle persons employment, employed them in moving a lot of bricks from one side of his yard to the other, and when that was done, in moving them all back again. Such, he took it, would be the labours of the Committee; they would take this Bill to amend existing laws into their careful consideration, and would, he hoped, so completely amend the amendment as to leave those laws very much as they found them. The Statement of Objects and Reasons drew attention to the chief points of the Bill, and the alterations referred to in paragraphs 3, 4, 5 appeared to be reasonable and proper. Paragraph 6, however, would, he hoped, be very carefully considered, for it seemed to him that an indorsement, unless anything was stated to the contrary, should have reference to the full value of the instrument. Paragraph 7 referred to the abolition of days of grace, and there seemed no reason why they should be retained. He believed they were allowed, originally, as the reasonable time within which an acceptance might be met, and had since, by use and custom, been established as a right. It

really was of no importance whether they were abolished or not, but days of grace were still the custom in England, and the abolition of them here contrasted rather strongly with the wish expressed to assimilate the laws of the two countries. He was, however, quite in favour of their abolition, but he did not so readily concur in the proposed latitude allowed to bills maturing on holidays. He failed to see why this should follow as a natural consequence of the abolition of days of grace. The transaction represented by a bill was supposed to have worked round so as to supply funds by due date of the bill, and as no business could be done on a non-working day, it was no hardship to make the bill due on the last working day before its maturity. The proposed alteration would, he hoped, be thrown out in Committee, and the law allowed to stand as at present. Paragraph 9 related to the domicile of a bill, and he thought it might be considered whether a bill should not be made to bear upon the face of it the place where it would be paid and where notice of dishonour could be legally sent. In this country, where people moved about so much, it would be difficult to say what a man's residence really was. Paragraph 11 related to the recovery of the value of a dishonoured bill, but its provisions, as regarded interest, were, he thought, incomplete; the holder should be entitled to recover from the drawer interest from the date of the bill. Paragraph 13 related to the restriction on the operation of the rule relating to loss or destruction of a bill, and he failed to see why an indorser should in such cases be relieved from liability. Apart from the question of the maker and acceptor having become insolvent, it was frequently the credit of an indorser that led to the negotiation of a bill, and the holder's action against him should not be less assisted than his action against the maker or acceptor, neither of whom he might ever have heard of, or considered, when he gave value for the instrument. Paragraph 14 referred to crossed cheques, a system which he hoped the Committee would carefully consider; for it did not seem to him at all adapted to the country. At home the existence of a clearing house made the system valuable, but they had no corresponding institution here, nor were they likely to have for many years, and who was to define who a banker was within the meaning of the Act? Paragraph 15 related to the rules of presentment and dishonour, which appeared to him to be unnecessarily arbitrary and stringent, and likely to lead to much complication and legal difficulty. It was easy to conceive the trouble that a drawee might give under the latitude herein allowed. He might refuse at any time to pay a cheque without first instituting all manner of frivolous and vexatious inquiries as to the time used in negotiation of a bill or cheque. Paragraph 17 had reference to the alteration made in bills, but he thought

the English rule was preferable to that sought to be established. Bills should be kept in proper custody, so that no stranger could have access to them, and they should be preserved in their original state to make them valid instruments, leaving it to the discretion of the acceptor to discharge his obligation or not.

He had preferred taking the annexure rather than the Bill itself as the basis of his remarks, but there were sections in the Bill itself which were equally objectionable, but which would be tedious to go through now in detail. They would, he hoped, be all carefully dealt with in Committee, and be so altered and modified as to make the Bill a much more satisfactory one than it could claim to be at present. The theory of assimilating the laws of India with those of England might be excellent, but practically he doubted the benefit of such assimilation if it was too closely adhered to without proper consideration of the very different position and circumstances of the two countries.

There was an addition, too, which he would wish to see made to the provisions of this Bill, and that was the adoption of summary proceedings in cases of dishonour, or even when reasonable grounds existed for suspecting intention of dishonour, and he should be glad if such summary proceedings included personal arrest. Such a measure would, he thought, be productive of much good, and afford protection in many cases where now it was much wanted.

In conclusion, MR. GLADSTONE repeated that he voted for the introduction of the Bill, because he believed that a codified form of bill-law would be acceptable and useful to the public, not because he had any fancy for the Bill itself. Indeed the more he looked at it the less he liked it, but he trusted that it would be so altered in Committee that not even the framers of it would be able to recognize it as their production. One principle would, he hoped, be kept steadily in view throughout, and that was the liability of any person putting his name to a bill or instrument of any description, from which liability he should not be lightly or easily released. If this were done, and if the common sense of existing customs were consulted, he had little doubt that the labours of the Committee would result in a measure that would be no disgrace to the Indian Statute Book.

The Hon'ble MR. SKINNER entirely concurred with Mr. Gladstone in thinking that this Bill would hardly, in its present form, be considered an acquisition to the commercial law of the country. There was probably no branch of mercantile affairs more important than that which related to the subject dealt with in this Bill; and there was at the same time none with regard to which a better understanding existed, and more general harmony prevailed, even in this coun-

try, where there were so many different usages in trade. Still, he thought it desirable that the different rules and customs prevalent in regard to bills should be gathered up and condensed into a Code of law of universal application, to which all parties might refer in cases of difficulty or doubt. But he did not think the present Bill supplied that want satisfactorily. It seemed to him that its terms, especially in the definition-clauses, were diffuse and vague; in some cases also inaccurate; and in others obscure. For instance, the definition of promissory notes, cheques and bills of exchange might be made more concise and clear. Then, there was an inaccuracy in the clause which said that these instruments must specify a sum of money to be paid at once or by instalments: that definition did not apply to cheques, an essential characteristic of which was that they must be paid at once. Then, section 4 provided that the maker of a bill of exchange might sign by means of a stamp or seal. The use of the stamp, he presumed, applied to corporate bodies, but the stamp in these cases was generally attested, and there appeared to be no provision requiring such attestation. So also with regard to seals, the rule, he presumed, was intended to provide for the case of Natives of rank: in that case also, he thought, it would not be desirable to allow persons to sign by sealing, without some attestation of genuineness. Section 10 provided for cases that did not occur in practice, and he did not see the use of it. There was another section (40) which provided that the transfer of bills by delivery warranted their genuineness. That was in direct opposition to the common practice with regard to transfers of bills. Very large operations did take place by transfers by mere delivery, and the bills were by consent taken without the indorsement of the transferer on the faith of the names already attached to them. There were many technicalities and refinements which were not needed, and doubts and difficulties were raised which would tend very much to unsettle the existing practice. As regarded days of grace, he did not see any reason why they should not be done away with, though on principle he was opposed to innovations on long established usages, unless they were founded on good grounds. He believed France was the only country in the world where they were not used. In some continental towns, days of grace varied from three to fourteen days: in America and England there were three days: but the question was quite unimportant. He thought the removal of the distinction between bills payable on demand and at sight was reasonable. As regarded notice of dishonour, by the practice in England, whatever the law might be, it was sufficient, in cases of dishonoured bills, for the holder to give notice to the party to whom he stood in the nearest relation, that was the person from whom he held the bill. Any different rule would be extremely inconvenient, having regard not only to the great dis-

tances in this country, but also to the difficulties of communication. As regarded crossed cheques, he quite agreed with Mr. Gladstone that there was no necessity for introducing that practice in this country, and the great difficulty was in knowing who a banker was here: every shroff and money-lender was a banker, and many houses of agency were considered bankers. Such a rule was not necessary in this country, but he did not think there was any harm in the provision. He thought it a decided improvement in cases of dishonour to give to noting the same effect as protesting, but he did not think the value of that alteration would be much appreciated, unless it were followed by a summary procedure for recovery. The defects of the Bill were so numerous that, to point them all out, he should have to go through it section by section. He could hardly put his finger on half a dozen sections which did not require some alteration or another; and it seemed to him that, if the Bill was to be of any value, it must, if committed, emerge from the Committee in a very different form to what it now presented. Unless Mr. Massey was prepared to proceed with it on that understanding, MR. SKINNER would prefer that it should at once be thrown out.

The Hon'ble MR. SHAW STEWART observed that the Hon'ble Members of the Council who were connected with commerce, had stated their views with regard to the mercantile and trading interests in the presidency towns. He trusted the Committee would also take pains to ascertain the opinions of Natives in the interior of the country, as the Bill would affect their exchange operations. He believed that its effect on such transactions would be far greater than what had been stated. He would not detain the Council by stating particulars as to the effect the Bill would have on Native hundís, but he hoped to be able to lay before the Committee the views of the Native merchants in Bombay.

The Hon'ble MR. BRANDRETH did not pretend as yet to have paid any attention to this Bill. He had not done so, partly because he had been busy with some other Bills with which he was more immediately concerned, and also because he gathered that it was not proposed to pass this Bill for some considerable time; and thus, if after he had time to study the Bill any thing worthy of being mentioned should occur to him, he would be able to bring it to the notice of the Select Committee; but as he was cursorily looking over the Bill before coming down to Council, he was struck with the difference between one of its provisions and the commercial custom of the Panjáb, which he would mention because it presented a curious analogy to the difference between the existing law of India and the law proposed by the Commissioners in regard to the ownership of stolen property, which was discussed last week

when Mr. Massey introduced the Contract Bill. From sections 86, 87 and 88 of the Bill now before the Council, it appeared that the drawee or acceptor of a Bill might discharge himself from liability by payment to the possessor, "provided the payment was made under circumstances which were not such as to raise a reasonable presumption that the possessor was not entitled to receive it." The expressions were the same as those used in the other Bill in regard to the acquisition of the ownership of goods by purchase from the possessor; but by the custom of sahukárs—bankers in the Panjáb—there was no such discharge from liability. Persons who cashed, accepted, purchased or received bills in the Panjáb were held responsible for their mistakes if they dealt with a party who had wrongfully acquired possession. For their own protection, therefore, such persons were in the habit of exercising great caution, and of requiring security from the opposite party in the transaction, unless he was well known as trustworthy. By the law of the Panjáb the innocent payer of a bill that had been stolen was no more discharged from liability than the innocent purchaser of stolen property.

Mr. Brandreth saw that the Hon'ble Mr. Maine, in his Statement of Objects and Reasons published with this Bill, referred to the multifarious customs with respect to Native hundís observed in the mofussil, as differing from the provisions of the present Bill. He only wished to state further that he hoped the nature and extent of those differences would be carefully enquired into by the Select Committee before the Bill was passed into law. He entirely concurred with his Hon'ble friend Mr. Shaw Stewart, that the opinion of the Native merchants and bankers throughout the country ought to be ascertained. He should have thought the Bill itself had been a masterpiece of theoretical legislation. His Hon'ble friends on his right, however (Messrs. Gladstone and Skinner), appeared to be of a different opinion, but any way it was most important that the effect of the practical application of the Bill to this country should be carefully considered.

The Hon'ble Sir Henry Durand thought that certain points which had been brought to the notice of the Council should be carefully considered in Committee with reference to Native mercantile transactions. There was one thing which perhaps the Right Hon'ble gentleman (Mr. Massey) might take into consideration, though it was rather a point of practical detail. The rules as to noting and protesting involved the employment of a notary public. So far as he was acquainted with the state of things in this country, notaries public were few, except in the presidency towns, and questions would arise, supposing the Bill were passed in its present form, as to what officers should be substituted

in the mofussil for notaries public. He would therefore draw attention to the Registration Act, and ask whether the officers employed to administer that law might not be made use of for this purpose.

There was another detail to which he would refer. The option of using a signature, stamp or seal only appeared in one section: was it intended to apply to other sections, as to endorsement, and so forth? He thought the point involved some difficulty.

[The Right Hon'ble MR. MASSEY stated that the option was intended only to apply to the maker of a bill].

Other points in the Bill had struck him as requiring consideration, but they would be more fitly dealt with by the Select Committee.

The Right Hon'ble MR. MASSEY thought the discussion which had taken place showed that the Bill would be much more effectively considered in Committee than by a protracted debate in Council. He must of course advert to the general dissent expressed by the Hon'ble gentlemen who represented the commercial interests in the Council, but he did not apprehend that they were prepared summarily to reject the Bill: that, he thought, would be inconsistent with the respect due to the Indian Law Commissioners, who were amongst the most eminent lawyers of England. They would no doubt vote for the reference of the Bill to a Committee, and he hoped that the result would be a measure acceptable to them and the mercantile community. The Hon'ble gentlemen had made sundry objections to the details of the Bill, but he hoped they would not consider that he was guilty of disrespect towards them if he preferred discussing those objections in Committee; they were of course of great weight as coming from such a quarter, and they were, for the most part, in themselves substantive objections deserving of consideration.

With regard to the question of the use of a seal or stamp for the purpose of signing, he had already adverted to it in his opening statement. He thought it extremely doubtful whether it was advisable to maintain that provision in the form in which it appeared in the Bill. By the English law, it was competent to persons to sign a bill of exchange by a mark: if, moreover, a man were in the habit of printing instead of signing his name, it had been held that he might be considered to sign a bill of parcels by his printed name; and there were still many persons in England engaged in commercial transactions whose education had been neglected, and who were not, therefore, able to sign their names. He had no doubt that the provision in the Bill was intended to apply to a similar class of persons in India. But when it was considered how few per-

sons in this country made notes or drew bills without being able to write their names, and how greatly the recognition of printed signatures would encourage fraud and forgery, the provision in question seemed not only uncalled for but inexpedient. On this matter, however, he did not express a decided opinion; it was a question for the consideration of the Committee, and he had no doubt that the Council would adopt the recommendation of the Committee on the subject.

There were some provisions objected to, which were supposed to be new, but which were really in accordance with the present English law. Mr. Skinner, for instance, had referred to section 10, which declared the respective liabilities of two joint makers of a note, when one subscribed only to an alternative liability, as an useless novelty. But though he (MR. MASSEY) admitted that a note made in such form was of rare occurrence, nevertheless it did occur (there were two or three cases on the subject cited in *Byles on Bills*, p. 92), and the framers of the Bill would have been justly chargeable with incompleteness had they omitted, in codifying the law, to declare the liability of the parties to such instruments. There seemed little difference of opinion as to the question of discarding days of grace. Mr. Skinner appeared to think that it was only in France that such days had been abolished; but the fact was that, owing to the authority of the French Codes, they had been abolished almost everywhere in continental Europe. Mr. Skinner had also alleged that the provisions of the Bill were diffuse, vague and obscure. But MR. MASSEY thought that every lawyer would agree with him in regarding the draft as remarkable for its terseness, clearness and precision. Mr. Shaw Stewart and Mr. Brandreth desired that the Bill should be circulated in the mofussil in order that the Natives might see what effect it would have on their transactions. MR. MASSEY believed that the Bill had already been translated into Urdú and Bengali and inserted in the local *Gazettes*: if, however, any further publication were considered necessary to promulgate the Bill, such publication could be made during the time the Bill would be in Committee. The Bill itself had been before the English-reading public for some time, and would be the subject of discussion for the time during which it remained in Committee, and he hoped they would receive suggestions from all quarters tending to improve the Bill. Sir Henry Durand had adverted to some other points of detail in reference to noting and protesting. It was true that, except in the presidency towns, we had not here, as in England, an officer whose business it was to record the fact of the dishonour of a bill; but although notaries public were hardly to be found in the mofussil, the Commissioners had provided that notarial functions might be exercised by any public officer authorized (that was, MR. MASSEY supposed, authorized by the Local Government) in that behalf. It would, however, be a question for the Committee

whether there was any use in retaining and extending to inland bills provisions as to protest and noting, which were now required only in the case of foreign bills. The Commissioners' provisions as to crossed cheques might also, perhaps, be omitted without detriment. He hoped that Mr. Gladstone and Mr. Skinner would give their attendance in Committee, where the subjects to which they had adverted would form the subject of discussion. The sittings of the Committee would, as far as possible, be regulated to suit their convenience, and notice would be given them when special subjects were to be brought on for discussion.

The Motion was put and agreed to.

GENERAL CLAUSES' BILL.

The Right Hon'ble MR. MASSEY also presented the Report of the Select Committee on the Bill for shortening the language used in Acts of the Governor General of India in Council and for other purposes.

CIVIL SUITS (PANJAB) BILL.

The Hon'ble MR. BRANDRETH, in moving for leave to introduce a Bill to enable the Lieutenant Governor of the Panjáb to invest any person with the powers of an Assistant Commissioner for the trial of civil suits, said that a few words would suffice to explain the object of this Bill. Some years ago several chiefs and Native gentlemen of rank and position in the Panjáb, and more particularly in the Cis-Sutlej States, were invested by the Local Government with the powers of Magistrates and Civil Judges within the limits of their own estates. This was done in accordance with the policy and wishes of the late Lord Canning, and the measure appeared to have met with the cordial approval of the then Secretary of State. Many of these chiefs had formerly been independent rulers and administrators of justice, each within the bounds of his own territory; but after the whole country was subjected to the British Government, their possessions were administered as integral parts of British districts. It was with the view therefore, apparently, of elevating the social position of these chiefs, of restoring to them as much of their former authority as could be restored without detriment to the common interests of the people, of enlisting them more firmly on the side of order and good government, and also because, in some of the estates, the people themselves were described as possessed with a strong feudal attachment to their former rulers, that it was determined to associate these chiefs with the officers of Government in the internal administration of the country.

In regard to the magisterial powers exercised by these influential and important persons, there had been no difficulty, for by the Criminal Procedure

Code the Local Government was authorized to invest any person with the powers of a Magistrate; but by the Panjáb Courts' Act (No. XIX of 1865) it was provided that only the Courts described in that Act should have power to try and determine civil suits, and among these Courts the Courts of the Native gentry were not included. Nowadays, everything was questioned in support of which some Act could not be quoted. Doubts had consequently been entertained of the legality of the Courts to which he had adverted. But besides these Courts, the Local Government had established in the Kangra district certain tribunals, with power to dispose of a particular class of cases which he supposed the ordinary Courts were not able to deal with in a satisfactory manner. These were cases relating to marriages and betrothals. The betrothal tribunals of the Kangra district had been pronounced illegal by the Chief Court of the Panjáb. The Lieutenant Governor, however, was anxious to give them a further trial. The object of the proposed Bill, therefore, was to remove all doubts on the subject, and to authorize the Lieutenant Governor to invest any person with the powers of an Assistant Commissioner in regard to civil suits, in the same way as he could by the Criminal Procedure Code invest any person with the powers of a Magistrate.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to define and amend the Law relating to Promissory Notes, Bills of Exchange and Cheques.—The Hon'ble Major General Sir H. M. Durand, the Hon'ble Messrs. Brandreth, Shaw Stewart, Hobhouse, Skinner and Stewart Gladstone, and the Mover.

The Council adjourned till the 20th December 1867.

CALCUTTA,
The 13th December 1867.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

Office Supdt. Govt. Printing.—No. 5388 L.C.—18-12-67.—180.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 20th December 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief, G. G. S. I., K. C. B.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble Sir George U. Yule, C. B., K. C. S. I.
The Hon'ble E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble C. P. Hobhouse.
The Hon'ble J. Skinner.
The Hon'ble Steuart Gladstone.
The Hon'ble Prasanna Kumára Thákúr, C. S. I.

The Hon'ble PRASANNA KUMÁRA THÁKÚR made a solemn declaration of allegiance to Her Majesty, and that he would faithfully fulfil the duties of his office.

COTTON FRAUDS' BILL.

The Hon'ble Mr. SHAW STEWART introduced the Bill for the suppression of Frauds in the Cotton Trade, and moved that it be referred to a Select Committee with instructions to report in six weeks. He said that the Bill was proposed by Mr. Maine, and published with His Excellency's permission in the *Gazette of India*. Before leaving India, Mr. Maine requested him (MR. SHAW STEWART) to take charge of the measure, and he assented, stating at the same time that he could not entirely approve of several of its provisions. Mr. Maine, however, expressed a desire that he should take it up as he seemed to consider it of some importance to have it introduced by some one who had practical knowledge of the working of the Bombay Act on which it was founded, and Mr. Maine suggested that he should bring up in Committee the various points in which he disapproved of the Bill as drafted. He would therefore proceed to describe those points which he proposed, as suggested by Mr. Maine, to bring to the notice of the Select Committee.

The first point affected the title and preamble of the Bill. It was, as they saw, a Bill for the suppression of frauds in the Cotton Trade. This Bill professed to be drafted on the model of the Act of the Bombay Government, of 1863, which was entitled "An Act for the prevention of adulteration of cotton "and the better suppression of frauds in the Cotton trade in the Presidency of "Bombay." That Act had been in force for four years in the Bombay Presidency, and there was a strong feeling that the object, as described in its title and preamble, was not exactly that which ought to have been aimed at, or, at all events, which ought to be aimed at in future. After four years' experience of the Act, the Bombay Chamber of Commerce wrote as follows, in reply to questions asked by Government as to the existence of, or necessity for, alterations in the scope of the Act, and as to the opinion of the Chamber on a proposal to raise the fees, and increase the fund for working it:—

"The discussions which have taken place have shown that members of the Chamber are almost unanimously of opinion that the Act has not, in so far as its provisions have been strictly adhered to, been productive of the good to the trade which its framers seem to have expected. It was an Act of an altogether exceptional character, intended to meet a crisis of a nature unexampled in the history of the cotton trade, and, without entering on a discussion of the results of the working of the Act while this exceptional state of matters lasted, the Committee respectfully beg to state that they cannot by any means admit the inference drawn by Colonel Walker in para. 48 of his report, that the improvement in Indian cotton which has admittedly taken place is attributable solely to the working of the Cotton Frauds' Act.

'While admitting to the full extent the zeal with which the officers of the Department have striven to carry out what must have been a difficult and delicate task, and giving them credit for having, in some instances, effected much good to the trade, the members of the Chamber (as appears from their recorded minutes) are generally of opinion that much of this good has been effected by their acting *ultra vires*.

"The 'curious coincidence' alluded to by Colonel Walker is further explained by the fact that, during the same period, the cotton trade has been deriving very great benefit from the exertions of Government officers outside the Department altogether, such as Mr. Ashburner, the Collector of Khandeish, to whom too great praise cannot be given; from the opening up of Railway communication into the heart of the cotton districts of the Central Provinces and Guzerat; from the impetus thereby given to the establishment of European agencies at the principal cotton marts of the interior; from the introduction of machinery for the better ginning of cotton, and for full and half pressing in the districts; from the increase of wealth (and, it may be added, intelligence) among the growers of the cotton, and their emancipation from their former state of dependence on the sahukárs; and, perhaps above all, from the heavy fall which has taken place in the price of cotton since the close of the American war, which brings the Indian grower again into competition with the American, in a market in which, during the early history of the working of the Act, the Indian growers virtually enjoyed a monopoly.

"But the exceptional state of matters which called the Act into existence has passed away, and the question now arises whether it is right, or expedient, to continue to tax the trade for the maintenance of the present costly system.

"On this point the Committee express the almost unanimous opinion of the Chamber, when they say that the benefits resulting from the working of the Act, in its strict interpretation, are not such as to justify the continuance of the tax.

"In Bombay itself, where, it was anticipated by the framers of the Act, the most beneficial results would be experienced, and where Government still considers that for Police purposes, that is to say, for the purposes of the Act as it stands, the main strength of the Department should be located, the Committee have no hesitation in expressing their opinion that the Act has proved a failure.

See para. 6 of Government Resolution, No. 1799.

"It would be difficult indeed to point to any instance in which the services of a staff, the local portion of which is maintained at a cost of about rupees 4,500 per mensem, have resulted in any practical good.

"Returns are furnished and placed on the files of the Chamber, but it does not appear that they are ever referred to, from which the inference is clear that merchants prefer trusting to their own establishments and their own system (good or bad as it may be), to the ordinary Police, and to the law as set forth in the Penal Code, to protect themselves in their transactions, in preference to the Cotton Frauds' officers.

"At the same time it is probable that the dread of detection and punishment has operated as a deterrent to fraud in Bombay itself, and still more in the mofussil.

"Although, therefore, a considerable section of the Chamber, impressed with the practical inutility of the Act, and believing strongly that it is wrong in principle, desire to see it immediately repealed, the majority of the members appear to be of opinion that it might be attended with danger to do so, but that it may be desirable, in the meantime, to alter or amend it so as to admit of the establishment being incorporated with that of the Cotton Commissioner, and the fund made available for such purposes as those contemplated in the Government Resolution of 28th May 1866.

"The Act would thus gradually lose its character of a Police measure, and become, instead of a Cotton Frauds' Act, a Cotton Improvement Act."

The opinion expressed by the Bombay Chamber of Commerce, that the establishment maintained under the Act should be incorporated with that of the Cotton Commissioner, coincided, MR. SHAW STEWART believed, with the views of the Home Government. He did not think his memory failed him when he said that the Secretary of State, in a recent despatch, expressed his approval of the change, and doubtless that despatch would be laid before the Committee. It was perhaps not out of place to explain, here, the distinction between the Cotton Commissioner and the Cotton Frauds' Department. Before

the Bombay Cotton Act was passed, the Government of Bombay, impressed with the great importance that the cotton trade was assuming, appointed an officer on a special salary sanctioned from the imperial revenues, to watch the trade, to collect statistics, to supervise the efforts to introduce superior descriptions of seed and machinery into general use, and to communicate on all points with the parties at home interested in the cotton trade of Western India. This office was and continued to be filled by Surgeon-Major Forbes of the Bombay medical establishment, and he trusted he might be allowed to pay a passing tribute to the energy, sagacity and success which had characterised his proceedings. Being perhaps more intimately acquainted than most persons with the details of Doctor Forbes' earlier connection with the cotton improvement question, he felt justified in venturing to offer his humble testimony, more especially as the name of Dr. Forbes had been omitted from the list of those enumerated by the Chamber of Commerce, an omission which must have been accidental and unintentional. The office held by Dr. Forbes was that of Cotton Commissioner, whereas the Cotton Frauds' Department was composed of the inspectors and sub-inspectors appointed under the Cotton Frauds' Act, and paid from the special fund raised under its authority.

He thought he had shown that the Committee would have to consider carefully the proper scope that was to be expressed in the title and preamble of the new Act.

The next point occurred in section 2. He was at a loss to understand how this section as it stood was inserted in the Bill. It was opposed, not only to the minute of Mr. Maine, in which the other members of the Council concurred, but also to the opening sentence of the Statement of Objects and Reasons, which ran thus :—

"The object of this Bill is to apply to the whole of British India, other than the Lower Provinces of Bengal, and the Presidencies of Madras and Bombay, provisions similar to those contained in the Bombay Cotton Frauds' Act (No. IX of 1863)"

whereas the section proposed that the Act might be extended by an order of the Governor General in Council to any part of India.

Mr. Shaw Stewart thought he should be able to set before the Council today good reasons for thinking that the proper application of the Act to the North-Western and Central Provinces would be a task quite enough for the present, and that the course stated in the Statement of Objects and Reasons should be adopted. Whatever alterations in the law were needed in the Bombay Presidency, and whatever new laws were to be introduced into Madras and Bengal, had better be left to the local legislatures.

The next point for the Committee to consider was, that all measures for preventing the adulteration of cotton divided themselves into two branches—those applicable to the ryot or producer in the interior, and those applicable at the ports of export. That division was clear in the Bombay Act of 1863, where the second and third sections re-enacted the old law of 1820, whereas the fourth and following sections provided an entirely new system of check at the ports of export. The division had to a great extent been lost sight of in the Bill now before them, where the essential sections that held such a prominent place in the Bombay Act were put on one side among the penal clauses, in such a way that the fact of their being of primary importance was apt to be lost sight of. He trusted the Committee would duly consider what portions of the Bill were to be applied to the Central and North-Western Provinces. It seemed questionable to extend a law for licensing and inspecting cotton presses to districts in the interior, unless it were shown that such presses were in existence or likely to be established at an early date.

He proposed also to ask the Select Committee to consider the first clause of section 12, which left to the Executive Government without any limit the power of fixing fees on each bale of cotton exported. In the Bombay Act the limit of four annas was fixed, and it would be for the Committee to consider whether this or some other limit should not be introduced into this Bill.

There were several other points to which he would ask the Select Committee to turn their attention, but he thought he had stated the chief ones, and he would now beg to offer a few remarks on the character of the measure. In the first place, the action which this Council was asked to take was very different from that taken by the Bombay Council in 1863. There, the Bill was keenly discussed, clause by clause, by a Council, all of whose members, official and non-official, had a most intimate local knowledge of the subject before them. There were most detailed reports, furnished by a Special Commission that had visited all the Bombay cotton districts, as well as by numerous public officers and private individuals, of the state of the trade. The effect of every section, almost of every word, was well known and minutely criticised, and with all that, they had a Bill which the Bombay Chamber of Commerce considered, after four years' experience, to have partially failed.

In this Council their position was very different. He believed it was nearly correct to say that none of the members present had any intimate acquaintance with the details of the present cotton trade of the North-Western or Central Provinces. To take an example, the Bombay Council knew very well what they

were doing when they enacted (section XI, clause 2) that the duties of the inspectors "should be to suppress the use of unlicensed presses, and to examine cotton offered for compression, or exposed or intended for sale; but had the Governments of the North-Western Provinces or the Central Provinces maturely considered whether these were the duties on which *their* inspectors were to be employed? The Bill before them had substituted the word "offered" for the words "exposed or intended for sale." He did not know the reason of this alteration, but he doubted its expediency, and above all he doubted if this section, as drafted, exactly described the duties on which any staff of inspectors that might be appointed in the North-Western Provinces and the Central Provinces could be profitably employed, or the manner in which the fund could be spent with most advantage. Besides this, they had before them the faintest possible expression of the public opinion in India as to the necessity for the measure. There were no detailed reports, nor any statistical information. One of the merchants in the North-Western Provinces, said that adulteration was prevalent, and that special legislation was needed there, and the Calcutta Chamber of Commerce endorsed that information as to the adulteration, and recommended that a Bill be passed for the better suppression of cotton frauds in the North-Western Provinces. But he doubted very much if the Calcutta Chamber contemplated the Act requiring all the presses in Calcutta, used for compressing the cotton of the North-Western Provinces, being licensed, and subject to constant inspection, as they were in Bombay, and liable to be closed for any infraction of the law. At all events, whether this was contemplated or not, he thought the Committee would have to decide whether cause had been shown to consider that the whole measure was generally needed. He would further remark that the difficulty which the Council would have in dealing with this Bill was somewhat increased by the fact that it came before them as a Government measure. In this respect it was very different from the Bombay Act, the history of which was not uninstructive. He thought it was in 1860 and 1861 that the merchants of Bombay first began to urge on Government the necessity of some special preventive measures being taken in regard to cotton, and specially asked that inspectors might be stationed at all the Railway stations to examine all cotton, and to see that no adulterated cotton was sent on to Bombay. The Government of Bombay stated, if he remembered right, its opinion, that the existing laws were sufficient to meet the case, but at the same time expressed its readiness to give every consideration to any Bill which the mercantile members of the Governor's Council might bring forward. Accordingly, early in 1863, Mr. Michael Scott brought forward the measure which was passed in April of that year. He would read to the Council the remarks of the President (Sir B. Frere) when the report of the Select Committee was

brought up for consideration, and he thought that the opinions contained in that extract could not fail to have great weight in determining the course the Council would adopt with reference to this Bill :—

"Before discussing the clauses of this Bill, it is as well to remind the Council that we have before us in point of fact four Bills, besides a great number of miscellaneous amendments. We have the original Bill, which, if I am not mistaken, some of the members still prefer to the Bill as amended by the Select Committee. We have that amended Bill, the general tendency of its amendments being to throw less responsibility upon the owners of presses. We have Mr. Robertson's amendments, which amount in fact to a fresh Bill, the ruling idea of which seems to be to devolve on those who have to work the Bill, that is, on Government, the task of seeing that no bad cotton comes to market, and greatly to increase the responsibility of press-owners; and finally, we have Mr. Premabhai Hemabhai's amendments, which also amount in fact to a new Bill, in which all the stringent portions of the original measure are omitted.

"I will not anticipate the discussion on the Bill. I would only beg Hon'ble Members to bear in mind the general tendency of the several forms in which the Bill is presented; whether in the interest of the Bombay merchant, the Bombay press-owners or of the up-country merchant, or of the cotton-growing ryot, and to avoid, as far as possible, that appearance of a patch-work measure which the Bill will assume unless the ruling idea of the several amendments be constantly borne in mind.

"I would further beg the Council to remember that neither form of the Bill can in any way claim the character of a Government measure. I am the more desirous to impress this upon the Council, because I see that the Hon'ble Mr. Robertson's amendments are sometimes spoken of as the 'Government measure,' and without in any respect pronouncing an opinion on those amendments, I wish it to be clearly understood, and I am sure the Hon'ble Member himself would wish them to be understood, as not entitled to or claiming to be considered as a Government measure.

"It is not that the Government would shrink from the responsibility of any measure which their duty required them to introduce, but I am sure that those members of the Council who are best acquainted with mercantile affairs would object, and I think most justly, to the Government taking upon itself to draw up and carry through the Council any measure so materially affecting the commercial and agricultural interests of the Presidency, without having good cause to believe that they carried with them the general consent and approval of those who, from their profession, were best qualified to judge of what was really best for the interests of fair trade and honest agriculture.

"It is only necessary to glance through the papers before us to see how widely different are the views of the most experienced men, and those who are most deeply interested in the question.

"There are certain fundamental rules which are now generally recognized by the British Parliament and people in dealing with questions of this kind, and among the most clearly defined

of those rules is that which prohibits further interference with the natural course of trade than can be proved to be necessary for the safety of the public, of the fair trader, and of those who cannot protect themselves. Government believed, and still believe, that a clear case had been made out for legislative interference, but how far that interference is necessary and allowable proves to be a question of greater difficulty and regarding which greater diversity of opinion exists than was at first supposed. It is clear that no measure we can devise can have any chance of success, unless the grounds of its necessity are very fully established, and the justice of its several provisions placed beyond all reasonable doubt. We have not only to carry with us those whose confirmation is necessary to make the Bill law, but we have to avoid making a measure so stringent that it may defeat itself by the general inconvenience to trade occasioned by working it.

"Under such circumstances it seems to me that it would be peculiarly undesirable to support any measure as a Government measure, beyond the point to which the experience of the individual Government members, and the reasons they may be able to adduce, shall entitle those opinions to the general support of the Council.

"It appears to me the duty of Government to aid the Hon'ble Member who has so zealously devoted so much time and ability to this important measure, to obtain all the information procurable, and throw every possible light on the subject. This I think has been very fully done. It is a further duty to consider all the information and the conflicting opinions submitted, with the aid of such light as our official experience may furnish, and to do our best to assist the Council to produce a useful workable measure; this I hope we shall do to-day, and when the Council have come to their decision and the measure has become law, it will be the duty of Government to see that it is executed, as far as its execution may by law rest with the executive officers of Government. This I venture to promise shall be done. I will now proceed to put the clauses *seriatim*".

He feared that the Council would think that he had dealt hardly with the Bill; that he had in fact acted the part of a cruel step-mother to the unfortunate bantling entrusted to his charge. But this was not the case. He had tried to state clearly the difficulties that seemed to beset any attempt to pass the Bill as published, and to bring to bear on it his experience of the working of the Act in Bombay. At the same time it was right that he should suggest the means by which those difficulties might be overcome. He would recommend that this Council should, as soon as possible, pass an Act extending to the Central Provinces and to the North-Western Provinces the penal measures contained in the 15th and 16th sections of the Bill, which were in fact the essence of all legislation on the subject, and regarding the expediency of introducing which into those Provinces he had little or no doubt. He would recommend that the Bombay Council should be requested to proceed with the measure which it had stated its readiness to do at once, and which was needed in the Central Provinces, namely, the measure to legalize the transfer to the Central Provinces and Berar of a certain portion of the Cotton Fund of

Bombay, which was fairly due to those Provinces in respect to the cotton grown in them and exported at Bombay. He would also suggest that the Government of Bombay be asked to take into its consideration the proposed alteration in the scope of the Act, as suggested by the Chamber of Commerce, if not also by the Secretary of State, and to proceed to give effect to its opinion by local legislation, or to lay it before the Government of India for consideration here. In the meantime he would ask the Governments of the North-Western and Central Provinces to submit detailed schemes for the application of the reserved portions of the Bombay Act, showing what duties the inspectors were to be employed on, what number was required, and how the funds for paying them were to be raised, and he thought the Council would be in a better position to decide on its further action, after it had seen what information was then before it.

The Hon'ble MR. GLADSTONE was sorry to offer any opposition to a measure which had no doubt been framed with the best possible intention towards the mercantile community, but which seemed to him to be quite unnecessary, and which, if carried out, promised to bring about very different results from those sought after. The Hon'ble Member who introduced the Bill appeared to entertain somewhat similar views himself, and although he talked of referring his bantling to the nursing of a Select Committee, MR. GLADSTONE thought it would be better for the Hon'ble Member to change his intention, and at once smother it on that table. The Hon'ble Member had not shown that there was any necessity for the introduction of the measure; he had not sought to establish that the common law of the land was insufficient; least of all had he endeavoured to prove why cotton, of all articles of export trade, should be made the subject of special legislation. MR. GLADSTONE was far from saying that cotton was not adulterated in this country, but the same might be said of many other articles of commerce which were liable to be tampered with before exportation, such as jute, oil, seeds, indigo, &c. In common practice a purchaser bought upon sample, and it was his own fault if he took delivery of quality inferior to that he had contracted to buy. He was very much mistaken if any case of gross fraud had gone unpunished through the inefficiency of existing laws, and in cases which he had heard of (though none had happened in his own experience) of dirt and stones being put into bales of cotton, the common law, he believed, would be sufficient to punish the offenders. The Hon'ble Member had spoken at some length on the Bombay Act, but this he could not admit as a precedent: it was well known that, for a few years before the passing of that Act, people were making large fortunes out of cotton, and any rubbish that could possibly be called by

that name was exported as such, and as long as the market kept up, no serious objections were made, but as soon as prices fell, there was an outcry as to the fraud. Smarting under their losses, the sufferers cried for protection to their Local Government, and that Government, which in other cases had shown similar compliance with popular clamour, responded to that cry by passing the Act referred to: but with what effect? That it had failed in its object was shown by the extract read by the Hon'ble gentleman from the letter of the Bombay Chamber of Commerce: that body at all events had seen reason to change their opinion of the usefulness or necessity of the law; and it must be apparent to anybody who had considered the subject, that the improvement of cotton was not due, and could not be effected, by legislation: such improvement must be left to the natural effect of prices, and laws of supply and demand. Looking at the Bill itself, MR. GLADSTONE thought its provisions were very imperfect and most arbitrary. No cotton presses were to be allowed to be worked except under license, and every bale was to bear a mark upon it sanctioned by Government. Inspectors were to be allowed to open bales whenever they liked, a proceeding which would no doubt cause great vexation and annoyance, and those inspectors were to be under the control of that wonderful Commissioner of Customs whose name appeared everywhere, and whose duties were as multifarious and undefined as those of a maid-of-all-work: he did not think that this scheme had anything in it to recommend it. Then again, the penalties to be inflicted under the Bill were absurd; it was easy to talk of fraud and dishonesty, but difficult to bring the offence home to the proper party. The Bill would be made the occasion for much vexatious interference and oppression, and its provisions would be very unpalatable to persons interested in the production and exportation of cotton. If the Hon'ble Member who introduced the Bill did not consent to withdraw it at once, MR. GLADSTONE would be compelled to vote against its reference to a Select Committee; first, because, in his opinion, special legislation was not required, and also because the Bill struck at that freedom of transaction which should always exist between buyer and seller.

His Excellency the COMMANDER-IN-CHIEF thought that the Council had been placed in a position of considerable difficulty by the course which had been pursued by his Hon'ble friend Mr. Shaw Stewart, who, in the absence of Mr. Maine, had charge of the Bill. For instead of enlightening the Council on the advantages likely to flow from the measure, he had indeed made the most serious opposition speech to the Bill that could possibly be conceived. He had commenced by condemning the principles on which the Bill was founded, and by expressing a wish to change the preamble and therewith the prin-

ciple of the measure. He had also condemned the details, and told the Government that they were not sufficiently informed to enable them to frame the Bill in a satisfactory way. He moreover required us to give certain directions to the Government of Bombay, with which this Council had nothing whatever to do. And finally the Council were asked to set aside the measure, both as regarded its principles and details, although, in the concluding portion of his statement, he recommended that the Bill might be passed for the Central and North-Western Provinces. His Hon'ble friend had also stated that the Council had not that experience of the trade in cotton which existed in the West of India, and which, therefore, better qualified the Governor and Council of the Bombay Presidency to deal with such measures. Sir WILLIAM MANSFIELD happened to have been a Member of the Council at Bombay four years ago, at the time when the discussions on the Bill which was subsequently passed into an Act took place, and he was free to admit that there was then, amongst the Members of the Council of the Governor of Bombay, that practical experience of the subject in its commercial aspect which was not possessed by perhaps any Member of this Council. But he did not therefore think that this Council were precluded by that circumstance from considering the principles on which the proposed measure rested: on the contrary, he was of opinion that they were able to judge of the soundness of those principles quite as well as, and perhaps better than, persons who were themselves personally interested in the subject regarding which they were legislating. The Council here approached the subject more from an outside point of view; they had no local bias, no desire to make money by cotton; no example of success in one direction, no desire to promote such success by special legislation. This Council approached the subject from an outside point of view; they were perfectly unbiassed and unprejudiced, and he therefore thought they were at least as well fitted to deal with this subject as the Council of Bombay. The Council had heard a good deal of the difficulty of applying special legislation to matters of trade, and were told that they ought to adhere to the large principles of political economy. But HIS EXCELLENCY had long been impressed with the belief—and recent melancholy events had confirmed that belief—that a half knowledge of the principles of political economy, and a half application of that half knowledge, might land us, not only in difficulties, but perhaps in lamentable and far spreading calamity. The arguments urged by the Hon'ble Member who had spoken last, HIS EXCELLENCY had heard *usque ad nauseam* four years ago, when a similar measure for the Presidency of Bombay was discussed, which was finally carried after the most careful consideration of the necessities of the industry concerned, and the great interests at stake. He ventured also to think that the Hon'ble Member was mistaken

when he said that Mr. Michael Scott was induced to introduce that measure owing to the desire of the Bombay merchants to recover themselves from the calamities which had befallen them.

[The Hon'ble MR. GLADSTONE explained that he had said that the Bombay merchants wished to protect themselves from the losses they were likely to sustain from the extensive transactions they were engaged in at that time.]

HIS EXCELLENCY was willing to accept the explanation that had been offered, but thought that the Hon'ble Member was wrong in his statement. The dates did not justify the remarks that had been made. The measure referred to was brought forward at a time when Bombay had attained that point of commercial prosperity which had never been known in any other part of India, never perhaps known in any part of the British empire, with the exception perhaps of its capital. So far from there having been, then, any calamity or anticipation of calamity, HIS EXCELLENCY was in a position to state that the exact converse was the case. The debates on the Bombay Cotton Frauds' Act took place in the year 1863, and there was not a thought of any calamity, no suggestion or hint that even the shadow of a calamity would come over the prosperity of Bombay till a year and a half after that date. Therefore, as having taken part in the deliberations which resulted in that measure, and on behalf of the absent friends with whom he was then associated, he must say that a most mistaken statement had been made as to the circumstances under which the Bombay Act was introduced and passed. That measure had been, he believed, originally suggested so far back as 1860. It was finally passed into law after prolonged enquiry and argument, and was indeed proposed and carried by them who had the good of the country strongly at heart.

But to revert to the principle of the present Bill. HIS EXCELLENCY had not had time to look over it in detail. It had been said that they had no experience of such a measure being required on this side of India, but should they not recollect that the contingency provided for by the Bill was one which was every day occurring? HIS EXCELLENCY thought that this was a matter so well known, that it required no special experience in trade to be certain of the fact. Everybody who had ever lived in the south or, he supposed, even in the north, of India must be well aware that what had led to the measure was the total impossibility of preventing the constant defilement of cotton with dirt and other substances, which took place before the bales were delivered into the hands of exporters. Surely every one was conversant with the extreme difficulty attendant on the bringing of pure cotton to the ports of exportation, and with the despair of all those who had anything to do with it. They all knew

of the representations which had been made by the Chambers of Commerce in England of the adulterated state of Indian cotton, and that at last it had been said that it was impossible to depend on the purity of a single bale. The Bombay Act had been introduced much more in consequence of the representations which had come from England, than from any pressure from this country, though, no doubt, those representations had been supported by the merchants at Bombay. It was, he believed, admitted on all sides that an improvement had been effected by the Act of 1863. In the quotation which had been read by his Hon'ble friend who introduced the Bill, if HIS EXCELLENCY'S memory was right, it was clear that the Bombay Chamber of Commerce had it in their own minds that the Act effected an improvement, because they said that the improvement which had taken place was not to be attributed *solely* to the operation of the deterrent measure of 1863. The improvement, therefore, was not to be attributed solely, but in a great measure to that Act; and HIS EXCELLENCY thought the Council ought to be satisfied with that as a good reason for approaching the measure now before them with the fairest and amplest consideration. As to whether they altered the preamble and called the measure an Improvement Act, rather than a Cotton Frauds' Act, that would not make much difference, because, if the object was to compel the ryots and producers to bring pure cotton to the market, there must be penal clauses. HIS EXCELLENCY would therefore ask the Council to enter on the discussion of the measure, not in the spirit of absolute condemnation, such as that evinced by Mr. Gladstone, nor in the tone of wholesale criticism, such as that to which they had listened from Mr. Shaw Stewart, but that they should give at least as much weight to the representations of those Chambers of Commerce in England who had taken an interest in the subject, and, as he understood, were satisfied with what had been done, as to that letter from the Bombay Chamber of Commerce which the Council had heard read to them today. When Mr. Maine obtained leave, last summer, to introduce this measure, he gave the Council to understand that, generally, the Bombay Act had been successful; HIS EXCELLENCY had listened, therefore, with great surprise today to much of the letter which had been read to the Council by Mr. Shaw Stewart, and which, to a certain extent, he was at a loss to comprehend.

The Hon'ble MR. SKINNER cordially joined with His Excellency the Commander-in-Chief in the desire that this Bill might meet with fair consideration from the Council; but having listened attentively to His Excellency's remarks, and to those which fell from the Hon'ble Member in charge of the Bill, he confessed that he had failed to see that any case had been made out for

this Council to legislate upon. It was not much to the point to say that the Bombay Cotton Frauds' Act had worked successfully, and had given great satisfaction to the Liverpool and Manchester traders. The cotton-dealers whose frauds were said to have been successfully checked were certainly not to be commisserated, because the law had taken their malpractices into special cognizance; while, on the other hand, the Liverpool and Manchester houses might well be congratulated on the advantage they possessed in being able to carry on their business under safeguards which were not extended to transactions in other produce, though it might have been expected, as the natural result of so beneficial a measure, that we should have seen at least a considerable falling off in the exportation by them to this country of adulterated cotton goods. He was not sufficiently familiar with the trade-usages in the Western Presidency to understand what special grounds existed there for a measure of this sort; but so far as his own experience went, there were none on this side of India, that did not apply to such products as jute, indigo, rice, silk, and even, he might say—as he said with all deference to the Government—to opium, as well as to cotton; and he could, with regard to each of these articles, adduce instances in which fraud had been practised while the goods were in their transit to market. So far as concerned any improvement in the quality of the cotton sent home from this country, he did not think the Bombay Act had effected much in this direction; for, as the latest accounts of the Home market showed, India-grown cotton had acquired no higher status there than it enjoyed previously to the outbreak of the American war, which had given the great stimulus to the cultivation out here. He was, on general principles, inclined to leave the correction of the evil that had been complained of, to the operation of the ordinary laws governing transactions between buyer and seller; and, at all events, if any special measure were needed for the protection, in the manner indicated, of trade interests in this country, it was not by piecemeal legislation of this sort that it was to be provided. It seemed to him that, if the Council were to admit the principle of the present Bill, it would be giving its sanction to a precedent that might hereafter be found to be extremely inconvenient. Holding the views he did with regard to the principle of the Bill, he had not thought it necessary to go through the different provisions of which it was composed; and he was unprepared, therefore, to discuss its details. Having failed to give notice of his intention to move an amendment to the motion for the introduction of the Bill, he understood that he was, by the rules of the Council, now debarred from proceeding in that form; but, if it would meet the convenience of the Council, he would, with the President's leave, propose that the debate be adjourned. It would otherwise be his duty, at once, to vote for the rejection of the Bill.

The Hon'ble MR. HOBHOUSE wished to say a few words as to his reasons for voting that the Bill be referred to Committee. As far as he understood Mr. Shaw Stewart's present intention as regarded this Bill, he proposed to confine it simply to the enactment of the penal clauses, and to extend its provisions only to the North-Western Provinces and the Central Provinces. Those clauses went to inflict certain punishments on persons who should adulterate or deteriorate cotton in a particular way, and who fraudulently and dishonestly sold the same. It seemed to MR. HOBHOUSE that those clauses were in themselves very severe, and that for any one to introduce into a Bill special clauses of that nature, some sort of *primâ facie* case should have been made out, and he did not think that the Hon'ble Member had shown sufficient reason for the enactment of those clauses. He had not in the first instance told the Council what the frauds were that he would provide against, and MR. HOBHOUSE himself had not had access to any papers showing what the frauds were that the Bill was intended to meet, nor what it was the Bill was intended to improve, nor in fact had he had access to any papers at all on the subject of the Bill. He had, however, gathered from the extract which had been read from the Bombay Chamber of Commerce's report, that they did say, as His Excellency the Commander-in-Chief had pointed out, that some sort of amendment in the way of cotton frauds had been brought about by the Bombay Act. That was one reason why the Council ought to consider in Committee the present Bill, which in substance resembled the Bombay Bill, although in arrangement and wording it differed considerably. His conviction that the Executive Council would not have sanctioned the introduction of the Bill if there had not been very good reasons for introducing it, also influenced him in voting for the reference of the Bill to a Committee.

The Right Hon'ble MR. MASSEY said, it must be admitted that the Hon'ble Mover had introduced the Bill in a manner which showed that he was not entirely satisfied as to the expediency of the measure; but notwithstanding this doubt, and the adverse opinion of the Bombay Chamber of Commerce, he had thought fit to move that the Bill should be referred to a Select Committee. The Bill had moreover encountered determined opposition at the hands of those Members of the Council who were engaged in commerce; their objections were founded on those broad principles of political economy with which they were all familiar. For his own part, MR. MASSEY must say that the Bill was not defensible on those principles which had so long prevailed in England, and which had resulted in such signal success. He had lived long enough in India, however, to discover that the strict application of the doctrines of political economy was not suited to the circumstances and peculiarities

of this country. They must consider every measure on its own merits, and with reference to the circumstances justifying its necessity, and must be prepared to depart from or compromise any principle the practical application of which might not be expedient. He was, himself, an old free-trader; he fully approved of the principles which had guided the commercial policy of England for the last twenty years; and he should be very sorry to see that policy reversed in any particular. But the Council had to consider the peculiarities of the cotton trade in this country. Mr. Gladstone and Mr. Skinner had asked what reason there was for applying the law to cotton, and not extending it to the other staples, but the answer was obvious. The facilities for adulterating cotton were very much greater than in the case of any other staple; and if we desired to promote the export trade in India, and to place the cotton of this country on the same footing as the cotton grown in other countries, we must advert to the peculiarities of the local trade, and provide means to prevent those fraudulent practices which, if left unchecked, would result in the destruction of this branch of commerce. What was the present state of the trade? Recent advices from England told us of falling markets, and falling markets meant difficulty in introducing our staples, and warned us to place them in such a position as to stand competition. If you exported cotton unfit for English manufacture, the result would be depreciation in the market and ultimately disappearance of the trade. We were no longer in that position when it might be said that we had the command of the English market, and that the manufacturers of Manchester were at our feet. The American war had ceased, and the cultivation of cotton had recommenced in the southern States of the Union. He spoke without book, but his impression was that the number of bales which were coming from America to the Liverpool market this season was nearly double the number that arrived there last season. Moreover, the closure of the American market had stimulated the growth of cotton in other parts of the world, and now, so far from enjoying a monopoly, we had to encounter formidable rivals in those other countries which had recently, with more or less success, addressed themselves to the cultivation of cotton. He must, therefore, say that any measure for improving the production of cotton in this country was recommended by the highest considerations of policy; and if he found that the present state of affairs was remediable by legislation, he should not be deterred from supporting this Bill, or a similar measure, by any pedantic adherence to the strict doctrines of political economy. If India was still to command the confidence of English manufacturers, we must take every means in our power to promote the production of cotton suitable for their purposes. He did not wish to speak harshly of the Native cultivators, but if, as he believed, there was a chronic state of fraud in

this, as in many other transactions of this country, we must encounter that fraud at its source, and prevent the cultivator from pursuing the short-sighted policy of enhancing his gains by adulterating his commodities. The details of the Bill were of course open to criticism, but the two questions at present were, first, whether, under the special circumstances, interposition on the part of the legislature was necessary, and, secondly, whether the Council were satisfied that such interposition could be carried into effect without a system of inspection such as the Bill provided? The cost of the necessary establishment would be inconsiderable, and he did not gather that the objections to the Bill rested on the enhancement of the price of the article which would be caused by the fees proposed to be levied from the cultivator or exporter. These he thought were matters of detail which might require consideration. But he should be sorry if the Committee should recommend, from a paltry economy or fear of interference with the freedom, or rather license, of the trade, any alteration which might hamper the vigour and efficiency of the Bill. On the contrary, he hoped that the inspectors would be armed with ample powers to carry the proposed Act into effect. If such powers were not given, he would prefer to put a stop to the Bill altogether.

Some observations had been made as to that provision of the Bill which empowered the Government of India to extend it to the territories under the Local Governments. That provision, however, conferred no absolute power on the Governor General: it was only permissive, its object was to obviate the necessity of future legislation, and MR. MASSEY thought the Council might have sufficient confidence in the discretion and moderation of the Government of India as to the exercise of that power. Mr. Shaw Stewart had also referred to the subject of fees. He thought that the discretionary power given to Government to fix the amount of fee which should be levied was unreasonable. The fee at present was limited to four annas, and MR. MASSEY would have no objection to limit the amount of fee to that sum; but he thought the Council would only starve the Bill and cripple its provisions if they were to be actuated by any spirit of false economy in stinting the establishments which it proposed to create, or if they were to be influenced by any illusory notion that the exportation of the commodity would be checked by the imposition of a small export fee. This Bill had been spoken of as if it were an innovation proposed today. He need hardly remind the Council that a similar measure was passed more than four years ago, and although its successful operation had been recently questioned by the principal commercial authority in Bombay, the

Chamber of Commerce, he must set against that the positive opinions of the Liverpool and Manchester Chambers of Commerce, who were quite as good judges as the local Chamber of the effect of the Bombay Act on Indian cotton. He hoped that the Hon'ble Members of Council who were interested in commerce would not persevere in their opposition, but suffer the Bill to go to a Select Committee, and he trusted the Hon'ble Members would give the Committee the advantage of their assistance in revising the Bill.

His Excellency the PRESIDENT said that, whatever might be the eventual fate of the Bill, he hoped that the Council would suffer it to go into Committee. So much was due, not only to Mr. Maine, under whose superintendence the Bill was framed, but also to the general demand both in England and this side of India for some such Bill as the present. The Bill originally passed in Bombay, and now law, had been in force since the month of June 1863; that was the date on which it received the assent of the late Governor General, Lord Elgin. Since that time the general impression had been that the Act had worked successfully on the Western side of India, and considerable benefit had arisen from its provisions. Not long ago he had seen in one of the Manchester newspapers a strong opinion to that effect. We knew also that the Bombay Government had, on various occasions, expressed opinions strongly favourable to the working of the measure. The Chief Commissioner of the Central Provinces had also advocated the extension of its provisions to the territories under his charge, and since the draft of the present Bill had been published in the *Gazette of India* on the 17th of August last, there had been no objection received against the Bill, except the one which Mr. Shaw Stewart had read. On the contrary, the Government of the North-Western Provinces had distinctly stated their desire for its introduction into those territories. Such being the case, it seemed to the PRESIDENT that the Council were bound to go on with the Bill. If any part of its provisions were unduly severe, and likely to be oppressive in any way, the experience of the working of the Bombay Act would enable the Committee to correct the Bill in this respect. As regarded the matter of fees, the PRESIDENT thought that question might be safely left to the judgment of the Governor General in Council. Every one knew that there was no desire to raise one anna more than would be required to work the Bill: whatever that cost might be, fees would be levied to that extent and no further, and even if the Government were so unwise as to endeavour to levy any sum beyond what was required for the necessary working of the law, public opinion would be irresistibly against them.

The Hon'ble MR. SKINNER, with the President's leave, wished to make a few remarks before the debate closed. He wished to draw attention to what seemed to him a fallacy in the arguments used by Mr. Massey in supporting this Bill. He thoroughly concurred with the Right Hon'ble Member in thinking that, having regard to the great importance to India of its cotton trade, every exertion should be made to extend and improve the cultivation of the article, though he might differ with him as to the means to be employed towards that end; but the Right Hon'ble gentleman seemed to treat the question before the Council as if the suppression of cotton frauds were, in that sense, an experimental measure. He begged to remind the Right Hon'ble gentleman that the Bombay Cotton Frauds' Act had been passed, if he remembered aright, in 1863, so that it had now been four years in operation, and the present position of the Home market did not, he thought, confirm the view taken of any improvement having, during that interval, been made in the quality of the Indian produce.

The Hon'ble MR. SHAW STEWART said, that His Excellency the Commander-in-Chief had forestalled, and expressed in far stronger words than he could use, the remarks which he had intended to offer in defence of the motives of those who passed the Bombay Cotton Frauds' Act of 1863. He would therefore say no more on that subject. He was charged, both by the Hon'ble gentleman who spoke directly after him, as well as by Sir William Mansfield, with having failed to explain clearly to the Council the state of matters that had necessitated the present Bill, or to describe the fraudulent practices common in the districts to which it was to be extended. But in that matter he must submit to the Council that he found himself in a difficulty. The state of the case, as known to the original proposer of this Bill, the Hon'ble Mr. Maine, was described in the Statement of Objects and Reasons that was before every Member of the Council, and, so far as he knew, no information whatever of a nature to commend the measure had been received by Government since then, nor had he any local knowledge of the subject on which to draw. He must explain a fact which he intended to have reserved for consideration by the Select Committee, that much of the information received by Government since the Bill was published, was, in respect of those points that he had referred to, opposed to its adoption as a whole. His Excellency the Commander-in-Chief also disapproved of his proposal to modify the scope and object of the Bill, but he must remind his Hon'ble and gallant friend that this change was recommended, not only by the Chamber of Commerce of Bombay, at the suggestion of the Bombay Government, but also, as already stated

by him—though on that point he spoke from recollection—that the change of system had been approved of by the Secretary of State. He had therefore good authority for saying that the question of the proper scope of the Bill would be one for the Committee to consider.

Mr. Massey appeared to have gathered from his speech that he had an unfavourable opinion of the proposal to extend this Bill; but this was far from his opinion, and it was certainly a grave omission on his part if he had failed to impress this upon the Council. He thought, however, that he had fairly stated the difficulties that would occur if they attempted to pass the whole Bill at once, and that he had recommended emphatically that the penal clauses for prohibiting fraudulent adulteration and deterioration should be introduced into the North-Western and Central Provinces, and that further legislation should only be postponed till the information before them was sufficiently precise. He might say that he did not agree with the condemnation of the Bombay Act that had been recorded by the Bombay Chamber of Commerce. He believed that it had done much good, and at the same time he thought it admitted of improvement. With reference to the Right Hon'ble gentleman's remarks on the subject of section 2 of the Bill before them, he had only to repeat what he had already said, that the section referred to was in direct opposition to the opening sentences of the Statement of Objects and Reasons published by the original proposer. Whether or not the fees should be unlimited would be hereafter considered. He would in the meantime remark that the Bombay Chamber of Commerce had shown that, even at the low limit to which the fees were kept by the Bombay Act, they amounted to a tax of nearly a quarter per cent. on the value of cotton as then ruling. He trusted that the Council would by an unanimous vote permit this Bill to be referred to a Select Committee, and that the result of that reference would be that they should be able to pass an Act that Session, making penal the adulteration and deterioration of cotton in the North-Western Provinces and in the Central Provinces.

The Motion was put and agreed to.

The Right Hon'ble Mr. Massey moved that His Excellency the Commander in Chief be added to the Select Committees on the following Bills—

To define and amend the law relating to Contracts, Sale of Moveables, Indemnity and Guarantee, Bailment, Agency and Partnership;

To define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill for the suppression of Frauds in the Cotton Trade—His Excellency the Commander-in-Chief, the Right Hon'ble Mr. Massey, the Hon'ble Messrs. Hobhouse, Skinner and Steuart Gladstone, and the Mover.

The Council adjourned till the 3rd January 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

CALCUTTA,
The 20th December 1867.

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